In the case of,

Southard & Co. Ltd., v. Salinger, 117 Fed. (2d) 194, 5 (C. C. A. 7th, 1941),

Judge Briggle, dissenting Judge in the case at bar, says:

> "Rule 65 of the Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c, which is substantially the same as Section 381 of 28 U. S. C. A., in reference to preliminary injunctions and temporary restraining orders, provides that 'every temporary restraining order granted without notice * * * shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes * * *.' The restraining order in question did not provide any time for its expiration and, therefore, in all events, expended its force after the expiration of ten days from its entry, May 29, 1940. Indeed, the Court was without power to give it vitality for a longer period, except upon certain conditions not here present."

Right to Inquire Into Jurisdiction

The right to inquire into jurisdiction, when the benefit of proceedings in other courts is asserted, is set forth in the following cases from which we quote: In the case of,

Old Wayne Mutual Life Association v. McDonough, 204 U. S. 8,

Mr. Justice Harlan said (p. 15):

> "The constitutional requirement that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state is necessarily to be interpreted in connection with other provisions of the Constitution, and therefore no state can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are wanting in the due process of law enjoined by the fundamental law. 'No judgment of a court is

due process of law, if rendered without jurisdiction in the court, or without notice to the party.' Scott v. McNeal, 154 U. S. 34, 46, 38 L. Ed. 896, 901, 14 Sup. Ct. Rep. 1108. No state can, by any tribunal or representative, render nugatory a provision of the supreme law. And if the conclusiveness of a judgment or decree in a court of one state is questioned in a court of another government, Federal or state, it is open, under proper averments, to inquire whether the court rendering the decree or judgment had jurisdiction to render it. * * *

"Chief Justice Marshall had long before observed in Rose v. Himely, 4 Cranch, 241, 269, 2 L. Ed. 608, 617, that, upon principle, the operation of every judgment must depend on the power of the court to render that judgment. In Williamson v. Berry, 8 How. 495, 540; 12 L. Ed. 1170, 1189, it was said to be well settled that the jurisdiction of any court exercising authority over a subject 'may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings."

In the case of,

Wetmore v. Karrick, 205 U. S. 141,

Mr. Justice Day says (on page 148):

"Before taking up the case in detail it must be regarded as settled by previous decisions of this court that, where an action is brought to recover upon a judgment, the jurisdiction of the court rendering the judgment is open to inquiry. And the constitutional requirement as to full faith and credit in each state to the public acts, records, and judicial proceedings of every other state does not require them to be enforced if they are rendered without jurisdiction, or otherwise wanting in due process of law. This principle was so lately asserted by a decision in this court as to render unnecessary more than a reference to the considera-

tion of the subject in Old Wayne Mut. Life Asso. v. McDonough, decided on January 7, 1907, of the present term."

In the case of,

Commonwealth of Kentucky v. Maryland Casualty Company, 112 F. (2d) 352, 356 (C. C. A. 6th, 1940),

it is held:

"Appellant's contention that the judgment of the state court is immune from collateral attack is without merit. Such immunity cannot exist unless the court awarding the judgment has jurisdiction of the person and the subject matter and the lack of either may be pleaded against the judgment when sought to be enforced or when benefit is claimed under it.

Judicial proceedings in personam against one not served with legal process and not being within the jurisdiction of the court, neither appearing in person nor by attorney, are null and void. Webster v. Reid, 52 U. S. 437, 459; 11 How. 437, 459, 13 L. Ed. 761; Combs v. Combs, 249 Ky. 155, 60 S. W. (2d) 368, 89 A. L. R. 1095. When a judgment by default is impugned, whatever may affect its competency or regularity is open to inquiry in a collateral proceeding."

In the important bankruptcy case of,

John Vallely v. Northern Fire & Marine Insurance Company, 254 U. S. 348,

Mr. Justice McKenna says (on pages 353, 4):

"Courts are constituted by authority and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."

PLENARY SUIT REQUIRED

In the authoritative case of Taubel-Scott-Kitzmiller Company v. Fox, 264 U. S. 426, 433, it is held that "in no case where it lacked possession could the Bankruptcy Court, under the law as originally enacted, or can it now (without consent) adjudicate in a summary proceeding the validity of a substantial adverse claim."

In the equally important case of,

Harrison v. Chamberlain, 271 U. S. 191, 3, it is stated that:

> "It is well settled that a court of bankruptcy is without jurisdiction to adjudicate in a summary proceeding a controversy in reference to property held adversely to the bankrupt estate, without the consent of the adverse claimant; but resort must be had to a plenary suit."

National Aircraft Corporation is a very different concern with individual stockholders, as it has been held to be by the Court to which the respondent is responsible, than if it were one with its stock owned by Christopher Company and a subsidiary of that debtor. The respondent is definitely an adverse claimant.

One wonders if this striving for transfer of jurisdiction does not have as its basis what has been referred to in the House of Representatives Report No. 1409, on the Chandler Act, p. 40, namely, "inside groups who may be in control of a reorganization, are able to search around for the jurisdiction in which they estimate it is less likely for a number of reasons that their conduct of the corporation will be examined and they will be exposed to liability."

In view of the reference in Judge Sparks' opinion to the execution of the reorganization petitions in Missouri (R. 92, 93), it is pertinent to cite Price v. Gurney, 89 L. Ed. 524 (U. S. Sup. Ct. Adv. Sheets, Vol. 89, No. 8), which

holds that a stockholder may not file a petition for reorganization in the name of the corporation.

We are including in the appendix, pertinent sections of the Chandler Act not contained in petitioners' appendix to their brief.

There are numerous statements in the American Law Institute's "Restatement of the Law of Judgments," which have a bearing on the points raised by the opposition, as well as the propositions asserted by us. We are including these also in the appendix to this brief.

CONCLUSION

We have perhaps gone at too great length in connection with brief in opposition to writ of certiorari. However, we felt that giving the Court the complete picture that we have would be the surest method of obtaining a denial of the writ.

We realize that conflict between Courts is unseemly and undesirable, but it has not been of our making. We also realize that there should be an end to litigation. The petitioners were before the Circuit Court of Appeals on petition for writ of mandamus and prohibition in Cause No. 8605, 7th Circuit. They have been before the District Court on review of Referee's order and in the Circuit Court on appeal.

We sincerely trust that the respondent's presentation of the facts and the applicable law, herein set forth, will be found to entitle him to a denial of the writ.

Respectfully submitted,

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APPENDIX

ADDITIONAL SECTIONS OF CHANDLER ACT WITH REFERENCE TO CHAPTER X

* * *

"Sec. 102. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: Provided, however, That Section 23, subdivision h and n of section 57, section 64, and subdivision F of section 70, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 128 of this Act, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 127 or 128 of this Act except where an adjudication had previously been entered. (11 U. S. C. A. 502.)

"Sec. 118. The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district, regardless of the location of the principal assets of the debtor or its principal place of business, if the interests of the parties will be best served by such transfer. (11 U. S. C. A. 518.)

"Sec. 120. Whenever notice is to be given under this chapter, the court shall designate, if not otherwise speci-

fied hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices to be given under this chapter. (11 U. S. C. A. 520.)

"Sec. 130. Every petition shall state—

"(1) that the corporation is insolvent or unable to pay its debts as they mature;

"(2) the applicable jurisdictional facts requisite under this chapter;

"(3) the nature of the business of the corporation;

"(4) the assets, liabilities, capital stock, and financial condition of the corporation;

"(5) the nature of all pending proceedings affecting the property of the corporation known to the petitioner or petitioners and the courts in which they are pending;

"(6) the status of any plan of reorganization, readjustment, or liquidation affecting the property of the corporation, pending either in connection with or without any judicial proceeding;

"(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter XI of this Act; and

"(8) the desire of the petitioner or petitioners that a plan be effected (11 U. S. C. A. 530).

"Sec. 137. Prior to the first date set for the hearing provided in section 161 of this Act, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee, or, if the

debtor is not insolvent, by any stockholder of the debtor. (11 U. S. C. A. 537.)

"Sec. 146. Without limiting the generality of the meaning of the term 'good faith', a petition shall be deemed not to be filed in good faith if—

"(1) the petitioning creditors have acquired their claims for the purpose of filing the petition; or

"(2) adequate relief would be obtainable by a debtor's petition under the provisions of Chapter XI of this Act; or

"(3) it is unreasonable to expect that a plan of reorganization can be effected; or

"(4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding. (11 U. S. C. A. 546).

"Sec. 158. A person shall not be deemed disinterested, for the purposes of section 156 and section 157 of this Act, if—

"(1) he is a creditor or stockholder of the debtor (11 U. S. C. A. 558).

"Sec. 161. The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate. (11 U. S. C. A. 561).

"Sec. 228. Upon the consummation of the plan, the judge shall enter a final decree—

"(1) discharging the debtor from all its debts and liabilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

"(2) discharging the trustee, if any;

"(3) making such provisions by way of injunction or otherwise as may be equitable; and

"(4) closing the estate." (11 U. S. C. A. 628.)

"Sec. 236. If no plan is proposed within the time fixed or extended by the judge, or if no plan proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

"(1) where the petition was filed under section 127 of this Act, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this Act; or

"(2) where the petition was filed under section 128 of this Act, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this Act, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders. (11 U. S. C. A. 636.)

"Sec. 237. Upon the dismissal of a proceeding under this chapter, where the petition was filed under section 128 of this Act, the judge shall enter a final decree discharging the trustee, if any, and closing the estate, except as otherwise provided by section 259 of this Act. (11 U. S. C. A. 637.)

"Sec. 238. Upon the entry of an order directing that bankruptcy be proceeded with—

"(1) where the petition was filed under section 127 of this Act, the bankruptcy proceeding shall be deemed reinstated and shall thereafter be conducted, so far as possible, as if the petition under this chapter had not been filed; or where the petition was filed under section 128 of this Act, the proceeding shall thereafter be conducted so far as possible, in the same manner and with like effect as if an involuntary petition for adjudication had been filed at the time when the petition under this chapter was filed, and a decree of adjudication had been entered at the time when the petition under this chapter was approved." (11 U. S. C. A. 638.)

SECTIONS OF RESTATEMENT OF LAW OF JUDGMENTS

"Sec. 41 (p. 161)

REQUIREMENT OF FINALITY.

THE RULES OF RES JUDICATA ARE NOT APPLICABLE WHERE THE JUDGMENT IS NOT FINAL JUDGMENT.

Comment:

(a) Finality of Judgments. For the purposes of the rules stated in this Subject a judgment at law is not a final judgment if further judicial action by the court rendering the judgment is required to determine the matter litigated;

and a decree in equity is not a final judgment if further action by the court is required beyond the supervision of the carrying out of the decree."

"Sec. 42 (P. 164)

(e) Where the judgment is not final. Where a judgment has been given in an action but it is not a final judgment, it is not conclusive between the parties in a subsequent action whether based upon the same cause of action or upon a different cause of action. The judgment, if in favor of the plaintiff, will not operate as a merger of the cause of action, or, if in favor of the defendant, as a bar to another action upon the same cause of action; nor is it conclusive by way of collateral estoppel between the parties in a subsequent action on a different cause of action."

"Sec. 11 (P. 65)

COLLATERAL ATTACK.

A JUDGMENT WHICH IS VOID IS SUBJECT TO COLLATERAL ATTACK BOTH IN THE STATE IN WHICH IT IS RENDERED AND IN OTHER STATES.

"Sec. 12 (P. 69) states:

If it appears in the record that the court does not have jurisdiction to render the judgment, extrinsic evidence is unnecessary to show the invalidity of the judgment and the judgment is open to collateral attack. Where it does not appear in the record that the court has not jurisdiction, or where it affirmatively appears in the record that the court has jurisdiction, the question arises whether the record is conclusive or whether extrinsic evidence is admissible to contradict the record and to show that in fact the court did not have jurisdiction to render the judgment.

"The question whether extrinsic evidence is admissible to contradict the record and to show that the court had no

jurisdiction to render the judgment may arise where such evidence is offered in further proceedings in the original action; it may arise in equitable proceedings brought to set aside the judgment; it may arise where a collateral attack is made upon the judgment."

"Sec. 5 (P. 25) provides:

(d) The provision of Article IV, Section 1, of the Constitution of the United States that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State is not applicable where the judgment is rendered by a Court of a State which has no jurisdiction over the parties."

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1945

Nos. 418 and 419

JEROME F. DUGGAN, Trustee of the Estates of Christopher Engineering Company, a Corporation, and National Aircraft Corporation, a Corporation,

Petitioner,

vs.

JAMES C. SANSBERRY, Trustee of the Estate of National Aircraft Corporation, a Corporation,

Respondent.

NATIONAL AIRCRAFT CORPORATION, a Corporation,

Petitioner,

vs.

JAMES C. SANSBERRY, Trustee of the Estate of National Aircraft Corporation, a Corporation,

Respondent.

BRIEF FOR RESPONDENT

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IN THE

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NATIONAL AIRCRAFT CORPORATION, a Corporation,

Petitioner,

vs.

JAMES C. SANSBERRY, Trustee of the Estate of National Aircraft Corporation, a Corporation,

Respondent.

BRIEF FOR RESPONDENT

These cases come before the Court on writs of certiorari granted on November 5, 1945, to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit (R. 91-105), affirming the order of the United States

District Court for the Southern District of Indiana, Indianapolis Division (R. 68), which denied petitions for review of the order of the Referee in Bankruptcy, approving the report of sale of James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation, Bankrupt, and confirming the sale of the assets of said Bankrupt (R. 3-4).

The sale was made pursuant to order of the Indiana Court in a pending bankruptcy proceeding (R. 28-30), after proper notice to creditors and all parties in interest (R. 8, 25-26), and was advantageous to the estate (R. 2, 14, 33-37). The day prior to the scheduled sale, National Aircraft Corporation filed a petition for Reorganization under Chapter X of the Bankruptcy Law (R. 58-61), not filing the petition in the pending bankruptcy in the Indiana Court, as authorized by Section 127 of the Bankruptcy Act (11 U.S.C.A. 527), but filing in the United States District Court for the Eastern District of Missouri, Eastern Division, as an alleged subsidiary of Christopher Engineering Company, then in reorganization proceedings in the Missouri Court (R. 92).

The opinions below held that the Indiana Court was entitled to determine that its jurisdiction to make and approve the scheduled sale was not terminated by the filing of the petition in the Missouri Court and the order (R. 61-66) entered thereon.

(For convenience, National Aircraft Corporation will sometimes herein be referred to as *National;* Christopher Engineering Company will be referred to as *Christopher;* the United States District Court for the Eastern District of Missouri, Eastern Division, will be referred to as the *Missouri Court;* the United States District Court for the Southern District of Indiana, Indianapolis Division, will be referred to as the *Indiana Court;* the Referee in Bankruptcy for the United States District Court for the Southern Dis-

trict of Indiana, Indianapolis Division, will be referred to as the *Referee*. James C. Sansberry, Trustee of the Estate of National Aircraft Corporation, Bankrupt, may sometimes be referred to as the *Indiana Trustee*. Jerome F. Duggan, Trustee of the Estates of Christopher Engineering Company, a corporation, and National Aircraft Corporation, a corporation, may sometimes be referred to as the *Missouri Trustee*.)

OPINIONS BELOW

The order of the Indiana District Court (R. 68) was a memorandum opinion, adopting, approving, and affirming the findings and order of the Referee in Bankruptcy (R. 3-4). The judgment of the Circuit Court of Appeals, affirming that order, is reported in 149 F. (2d) 548 (C.C.A. 7th, 1945), and is printed in the Record of this case. (R. 91-105).

STATEMENT OF THE CASE

The statement of the case in petitioners' brief is not complete. The clearest way to present this case to the Court is to give the complete sequence of events in chronological order:

December 27, 1943—Christopher Engineering Company filed petition in the United States District Court for the Eastern Division of the Eastern District of Missouri, for reorganization under Chapter X of the Bankruptcy Law (R. 92).

January 19, 1944—State Court Receiver appointed for National Aircraft Corporation by Circuit Court of Madison County, Indiana (R. 16). Restraining order entered in Christopher reorganization by District Court in Missouri, purporting to restrain Judge of Circuit Court of Madison County, Indiana, and plaintiff in receivership suit, and all other persons from interfering with or affecting assets of

National Aircraft Corporation (R. 16-17). Receiver delayed qualifying (R. 16).

January 21, 1944—Involuntary petition in Bankruptcy filed in United States District Court for Southern District of Indiana, against National Aircraft Corporation, an Indiana corporation, with its principal place of business and all its assets located at Elwood, Indiana (R. 12).

January 25, 1944—Hearing before Referee in Bankruptcy for United States District Court for Southern District of Indiana on application of Lilly Varnish Company, a petitioning creditor, for appointment of Receiver for National Aircraft Corporation and for restraining order (R. 15). Jerome F. Duggan, Trustee of Christopher Engineering Company, appeared by attorney, Hubert Hickam, of Indianapolis, Indiana (R. 15).

February 1, 1944—Order entered by Referee in Indiana Court restraining National Aircraft Corporation, its officers, employees and agents, and all other persons from removing any assets or diverting elsewhere any payments due to National Aircraft (R. 15-19). Appointment of Receiver held under advisement (R. 19). Attorneys for Duggan, Trustee of Christopher, notified (R. 19). No petition for review filed (R. 13).

February 7, 1944—Order of adjudication in Bankruptcy entered against National Aircraft Corporation by United States District Court for Southern District of Indiana (R. 12). No answer filed, although Duggan, Trustee of Christopher Engineering Company, had been advised of the filing of the involuntary petition in Bankruptcy (R. 12).

February 8, 1944—Order entered by Referee in Indiana Court appointing James C. Sansberry, of Anderson, Indiana, Receiver in Bankruptcy of National Aircraft Corporation (R. 20-22). Attorneys for Duggan, Trustee of Chris-

topher, notified (R. 8, 22). No petition for review filed (R. 8).

March 7, 1944—First meeting of creditors of National Aircraft Corporation, Bankrupt, held in Indianapolis, Indiana, before Referee in Bankruptcy for United States District Court for Southern District of Indiana (R. 6). Joseph M. Brown, Secretary-Treasurer of National Aircraft, testified under oath that he and A. B. Christopher, as individuals, were the owners of all the capital stock of National Aircraft and that the stock was not the property of Christopher Engineering Company (R. 6, 12). Phil O'Neill of Anderson, Indiana, Attorney for Duggan, Trustee of Christopher, was present in Court (R. 7), together with attorneys Noah Weinstein and Sherman Landau of St. Louis, Missouri, (R. 7), later of counsel for National in Missouri Court (R. 60), and they offered no objection to appointment of a Trustee (R. 7). Draft of plan to sell the assets of National to a new Indiana corporation, in which Brown would be the moving spirit, was submitted through attorney O'Neill (R. 7). Referee examined plan and pronounced it unlawful, inequitable, and offering no security to creditors (R. 7). James C. Sansberry appointed Trustee in Bankruptcy of National Aircraft Corporation (R. 13). No petition for review filed (R. 13).

March 10, 1944—James C. Sansberry qualified as Trustee by filing bond as required (R. 13).

March 21, 1944—Trustee of National Aircraft files petition for order authorizing sale of real and personal property of Bankrupt (R. 22-24).

March 25, 1944—Order entered calling meeting of creditors of National Aircraft for April 4, 1944, to consider Trustee's petition for sale (R. 25-26). Order provided for notice of meeting to be given to Duggan, Receiver of Chris-

topher Engineering Company, and to Pence, O'Neill and Diven, attorneys for Joseph M. Brown, Secretary-Treasurer of National Aircraft (R. 25). These notices were sent (R. 8).

April 4, 1944—Meeting of creditors held, pursuant to notice, to consider Trustee's petition for order of sale (R. 8). Neither Duggan, Trustee, nor Joseph M. Brown appeared (R. 8). No objection made to entering of an order for sale (R. 8).

April 6, 1944—Order entered by Referee in Bankruptcy of United States District Court for Southern District of Indiana directing Sansberry, Trustee, to sell the real and personal property of National Aircraft Corporation, Bankrupt, on April 20, 1944, at 9:30 A. M. (R. 28-30). Trustee authorized to employ auctioneer (R. 30).

April 10, 1944—Duggan, Trustee of Christopher, and Joseph M. Brown, Secretary-Treasurer of National Aircraft, notified of order of sale. (R. 9). No petition for review filed (R. 9).

April 6, 1944, to April 20, 1944—Sansberry, Trustee of National Aircraft, employed auctioneer and made intensive preparations for the sale (R. 9), and incurred considerable expense in lotting and parcelling, and in advertising the sale widely in newspapers (R. 9). Auctioneer sent 3700 circulars to prospective purchasers (R. 9).

April 19, 1944—Petition for reorganization filed in United States District Court for Eastern Division of Eastern District of Missouri, by National Aircraft Corporation, as alleged subsidiary of Christopher Engineering Company (R. 58-61). Petition signed, "National Aircraft Corporation, a corporation, by J. M. Brown, Petitioner" (R. 60). In ex parte proceeding, order entered by Missouri Court approving petition of National Aircraft Corporation, appointing Jerome F. Duggan Trustee of National Aircraft

Corporation, and purporting to restrain James C. Sansberry, Trustee in Bankruptcy of National Aircraft Corporation in proceedings pending in the United States District Court for the Southern District of Indiana, from doing any act or thing affecting the property and assets of the National Aircraft Corporation (R. 61-66).

April 20, 1944—8:00 A. M.—Copy of Restraining Order received by United States Marshal in Indianapolis, Indiana (R. 66).

April 20, 1944—9:30 A. M.—Copy of Restraining Order served at Elwood, Indiana, by United States Marshal on James C. Sansberry, Trustee, and Samuel C. Winternitz & Co., auctioneers (R. 66-67).

April 20, 1944—9:30 A. M. to 6:00 P. M. (R. 39)—James C. Sansberry, Trustee, proceeded with sale of assets, as previously ordered by Referee in Bankruptcy for United States District Court for Southern District of Indiana, with between 300 and 400 persons attending the sale (R. 39) and sold the real estate, and the personal property in some 600 separate lots and parcels (R. 39) for a total price of approximately $55,315.00 (R. 34), being considerably in excess of the total appraised value of approximately $47,000 (R. 40), with all purchasers being notified that sales were subject to confirmation by the Referee at a hearing set for April 25, 1944 (R. 42).

April 21, 1944—Trustee files report of sale (R. 38-42). Order entered by Referee assigning matter of approval of sales for hearing on April 25, 1944, and ordering that copies of order be sent to Duggan, Trustee of Christopher Engineering Company; to J. M. Brown, c/o attorneys Pence, O'Neill and Diven; and to Hubert Hickam, attorney of record for Duggan, Trustee (R. 33-37).

April 25, 1944—Hearing before Referee for confirmation

of sale. No appearance by, or on behalf of, Duggan, Trustee, or National. Hearing continued until May 2, 1944 (R. 43).

May 2, 1944—Continued hearing before Referee, on report of sale (R. 3), with no appearance by Duggan, Trustee, and no cause shown why report of sale should not be approved (R. 3).

May 3, 1944—Order entered by Referee, approving and confirming sales made by Sansberry, Trustee of National Aircraft Corporation (R. 3-4).

May 10, 1944—Petition for Review of Referee's Order approving sale filed by National Aircraft Corporation (R. 44-47) and by Duggan, Trustee (R. 48-52). Petitions also filed for Stay pending Review by Judge (R. 47-48, 53).

May 16, 1944—Petitions for Review granted by Referee (R. 54-55), but petitions for stay of enforcement of order entered May 3, 1944, denied (R. 55). No appeal was taken from the order denying a stay.

May 18, 1944—Referee's certificate on review filed with United States District Court for Southern District of Indiana, Indianapolis Division (R. 2-15). Certificate contains finding of fact that capital stock of National Aircraft Corporation was the property of J. M. Brown and A. B. Christopher and said bankrupt corporation was not a subsidiary of Christopher Engineering Company (R. 12). Certificate also contains finding of fact that since the appointment of James C. Sansberry as Receiver in Bankruptcy and Trustee, several thousand dollars had been expended in preserving assets and property of bankrupt and in preparing them for sale, and in effecting the sale thereof (R. 13).

In addition to the proceedings mentioned, Petitioners herein filed petition for writ of prohibition and mandamus against the Indiana District Judge and Referee on May

23, 1944, in the Circuit Court of Appeals for the Seventh Circuit, the cause being No. 8065, in that Court. Exhibits Nos. 1, 4, 5, 6, 7, 8 included in Appendix B of this Brief, were included in the verified answer of the Respondent in that case. The petition was denied on June 14, 1944.

PERTINENT SECTIONS OF STATUTE INVOLVED

There are ample grounds for affirming the judgment of the Circuit Court of Appeals without any necessity for statutory interpretation. But if statutory interpretation becomes necessary, the following sections of the Chandler Act are pertinent, to determine the jurisdiction of bankruptcy courts in reorganization proceedings:

> *Sec. 2a.* The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created *courts of bankruptcy* and *are hereby invested*, within their respective territorial limits as now established or as they may be hereafter changed, *with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act*, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to
>
> (1) *Adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions*, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions; (11 U. S. C. A. 11 a).
>
> *Sec. 112.* Prior to the approval of a petition, *the jurisdiction*, powers and duties *of the court* and of its

officers, *where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication.* (11 U. S. C. A. 512).

Sec. 126. A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to $5,000 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, *may,* if no other petition by or against such corporation is pending under this chapter, *file a petition under this chapter.* (11 U. S. C. A. 526).

Sec. 127. A petition may be filed in a pending bankruptcy proceeding either before or after the adjudication of a corporation. (11 U. S. C. A. 527).

Sec. 128. If no bankruptcy proceeding is pending, an original petition may be filed with the court, in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction. (11 U. S. C. A. 528).

Sec. 129. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 128 of this Act or in the court which has approved the petition by or against its parent corporation. (11 U. S. C. A. 529).

Against Respondent's contention, that National could not file for reorganization in the Missouri Court under Section 129, above, since its petition was not an "original petition," but could file only in the Indiana Court under Section 127, above, the Petitioners have urged consideration of the following sections:

Sec. 148. Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure,

or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property. (11 U. S. C. A. 548).

Sec. 149. An order, *which has become final*, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court. (11 U. S. C. A. 549).

THE QUESTIONS PRESENTED

The following questions are presented for the decision of the Court in this case:

1. Did the Indiana Court, having admittedly acquired jurisdiction of the assets of National Aircraft Corporation on January 21, 1944, lose that jurisdiction automatically by the ex parte order of the Missouri Court on April 19, 1944, or was it entitled to be governed by the jurisdictional facts in its own record in determining the validity of its sale of assets on April 20, 1944?

2. Did the Missouri Court have any jurisdiction at all to entertain the petition of National Aircraft Corporation for reorganization under Chapter X of the Bankruptcy Act, since it was not an "original petition" as required by Section 129 of the Bankruptcy Act (11 U. S. C. A. 529), but should have been—and could have been—filed in the Indiana Court as required by Section 127 (11 U. S. C. A. 527)?

3. Could the Missouri Trustee terminate the obviously adverse possession of the Indiana Trustee by a summary order in an ex parte proceeding, or was an application for custody or a plenary suit necessary in the Indiana Court?

4. Are the Petitioners estopped from questioning the jurisdiction of the Indiana Court, by reason of the fact that Jerome F. Duggan, Trustee for Christopher Engineer-

ing Company, appeared before the Indiana Court, by attorney making a general appearance (R. 15; see Exhibits 4 and 5 in Appendix B of this Brief, pages 72 and 73), in opposition to appointment of Receiver for assets of National Aircraft Corporation (R. 15-19), and by further reason of the fact that J. M. Brown, who signed the Missouri petition for reorganization on behalf of National Aircraft Corporation on April 18, 1944 (R. 60), had previously testified under oath in the Indiana Court that National was not a subsidiary of Christopher (R. 6, 12), with no objection being made and no petition for review being filed either by Duggan, Trustee of Christopher, or J. M. Brown, to the appointment of Receiver for National (R. 20-22), to the adjudication of National as a bankrupt (R. 12), to the appointment of Trustee for National (R. 7, 13), or to the order of sale of the assets of National (R. 8, 28-30), although both parties were notified personally or through their attorneys of record of all steps in these proceedings (R. 7, 8, 9, 12, 13, 19, 22, 25).

SUMMARY OF ARGUMENT

I. The judgment of the Circuit Court of Appeals should be affirmed, because the Indiana Court had the right to determine, from the facts in its own record, that it had jurisdiction to confirm the sale of assets of National Aircraft Corporation, made on April 20, 1944.

A. The Indiana Court acquired valid jurisdiction of National Aircraft Corporation on January 21, 1944, through involuntary bankruptcy proceedings, since the reorganization proceeding of Christopher Engineering Company in the Missouri Court, begun December 27, 1943, did not carry with it the reorganization of any subsidiary or alleged subsidiary not joined therein.

B. The order of the Missouri Court on April 19, 1944,

did not terminate the jurisdiction of the Indiana Court, since the record of the Indiana Court contained direct evidence and findings of fact that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company, and therefore, the Indiana Court could find that the Missouri Court had no jurisdiction to approve National's petition for reorganization, filed under Section 129 (11 U. S. C. A. 529) as a subsidiary of Christopher.

C. The order of the Missouri Court had not become final on May 3, 1944, the date of the Indiana order approving the sale, and therefore it was subject to attack when asserted in opposition to that order.

D. Petitioners' claim that the judgment of the Missouri Court was res judicata has no basis in fact, because Respondent was never before the Missouri Court.

II. Even if it should be determined that National was a subsidiary of Christopher, the judgment of the courts below should be affirmed, because the Missouri Court had no jurisdiction to approve National's petition for reorganization.

A. A subsidiary corporation can file petition for reorganization in the court which has approved the reorganization petition of its parent corporation, only if it is an "original petition."

B. Under the proper construction of Section 129, given in the court below, an "original petition" can be filed only when there is no pending bankruptcy proceeding by or against the corporation.

C. Section 129 is far more than a mere venue statute, but is jurisdictional in its nature.

D. The order of the Missouri Court had not become final on May 3, 1944, the date of the Indiana Order approv-

ing the sale, and therefore it was subject to attack when asserted in opposition to that order.

III. The judgment of the Circuit Court of Appeals should be affirmed, because the title and custody of the Indiana Trustee, acting under the order of the Indiana Court, could not be terminated by a summary proceeding in the Missouri Court.

A. The Missouri Court had no jurisdiction to adjudicate in a summary proceeding a controversy over property held adversely to the claim of the Missouri Trustee.

B. The Indiana Trustee had a very substantial adverse claim, and was entitled to a plenary suit.

IV. The judgment of the Circuit Court of Appeals should be affirmed, because the Petitioners were estopped by their conduct and course of action in the Indiana bankruptcy proceedings from questioning the jurisdiction of the Indiana Court.

A. Duggan, Trustee of Christopher, had appeared in the Indiana Court by attorneys of record, and J. M. Brown, signer of National's petition for reorganization in the Missouri Court, had appeared in the Indiana Court personally and by attorney, without either party questioning the jurisdiction of the Indiana Court, and with both parties apparently acquiescing fully in its actions until the very eve of sale.

B. The Indiana Trustee, in reliance on the representations and acquiescence of Duggan, Trustee of Christopher, and of J. M. Brown, spent several thousand dollars in preserving the assets and property of National Aircraft Corporation and in preparing those assets for sale, and in advertising and effecting the sale.

ARGUMENT

I

The judgment of the Circuit Court of Appeals should be affirmed, because the Indiana Court had the right to determine, from the facts in its own record, that it had jurisdiction to confirm the sale of assets of National Aircraft Corporation, made on April 20, 1944.

It is axiomatic, under our federal judicial system, that a court has the right to judge of its own jurisdiction.

Texas v. Florida, 306 U. S. 398, 83 L. Ed. 817 (1939);

Chicot County Drainage District v. Baxter State Bank, 308 U. S. 371, 84 L. Ed. 329 (1940);

Ripperger v. A. C. Allyn & Co., Inc., 113 F. (2d) 332 (C. C. A. 2d, 1940), *cert. denied*, 311 U. S. 695, 85 L. Ed. 450 (1940).

As stated in *Chicot County Drainage District v. Baxter State Bank* (also cited by Petitioners at pages 13 and 28-29 of their Brief), in 308 U. S. at 376, 84 L. Ed. at 333:

> "The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act."

Similarly, as stated in *Ripperger v. A. C. Allyn & Co., Inc.* (also cited at pages 13 and 31 of Petitioners' Brief), in 113 F. (2d) at 333:

> "A court has power to determine whether or not it has jurisdiction of the subject matter of a suit and of the parties thereto."

Under this principle, the United States District Court for the Southern District of Indiana, Indianapolis Division, had the right to find that it had jurisdiction to confirm the sale of assets of National Aircraft Corporation, Bankrupt.

A. The Indiana Court acquired valid jurisdiction of National Aircraft Corporation on January 21, 1944, through involuntary bankruptcy proceedings, since the reorganization proceeding of Christopher Engineering Company in the Missouri Court, begun December 27, 1943, did not carry with it the reorganization of any subsidiary or alleged subsidiary not joined therein.

The creditors' petition for involuntary bankruptcy, filed against National Aircraft Corporation on January 21, 1944, contained all the jurisdictional facts required by Section 2 *a* of the Bankruptcy Law (11 U. S. C. A. 11 *a*) to confer jurisdiction on the Indiana Court. The debtor was an Indiana corporation, with its principal place of business and all its assets located at Elwood, Indiana.

Record, p. 12.

The pending reorganization proceeding of Christopher Engineering Company in the Missouri Court (R. 92) did not interfere with the jurisdiction of the Indiana Court, since National Aircraft Corporation, even if regarded as a subsidiary of Christopher, had not joined in the Missouri proceedings.

In re Adolf Gobel, Inc., 80 F. (2d) 849 (C. C. A. 2d, 1936);

Commercial Cable Staffs' Ass'n v. Lehman, 107 F. (2d) 917 (C. C. A. 2d, 1939).

As pointed out by Judge Learned Hand in the *Commercial Cable Staffs'* case, *supra*.

"* * * Although the shareholders of the parent and the subsidiary are the same, the creditors are divided into two groups, their rights being against different assets. An examination of the text of the section leaves no doubt that this is its scheme. It does indeed allow a subsidiary to join in the reorganization of its parent (sub. a), but only upon filing its own petition and getting a separate approval." See 107 F. (2d) at 920.

B. The order of the Missouri Court on April 19, 1944, did not terminate the jurisdiction of the Indiana Court, since the record of the Indiana Court contained direct evidence and findings of fact that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company, and therefore, the Indiana Court had the right to find that the Missouri Court had no jurisdiction to approve National's petition for reorganization, filed under Section 129 (11 U. S. C. A. 529) as a subsidiary of Christopher.

Even if National was a subsidiary of Christopher, which Respondent does not admit or concede, the Missouri Court had no jurisdiction to approve National's petition for reorganization under a proper interpretation of Section 129 of the Chandler Act, as will be discussed in Point II of this Argument. But if National was *not* a subsidiary of Christopher, then clearly and *a fortiori* the Missouri Court had no jurisdiction to approve National's petition. The subsidiary-parent relationship was the essential jurisdictional fact that must be established. If the Indiana Court found from its own record that National was not a subsidiary of Christopher, then the Indiana Court had unquestionable jurisdiction to confirm the sale of assets pursuant to its order.

A strong and exact analogy to this situation is found in the cases involving jurisdiction to impose a succession tax

on a decedent's estate, where domicile of the decedent is the basic fact on which jurisdiction rests.

Tilt v. Kelsey, 207 U. S. 43, 52 L. Ed. 95 (1907);

Texas v. Florida, 306 U. S. 398, 83 L. Ed. 817 (1939);

In re Dorrance, 115 N. J. Eq. 268, 170 Atl. 601 (1934), *supplemented on other points in* 116 N. J. Eq. 294, 172 Atl. 503 (1934), *cert. denied*, 13 N. J. Mis. R. 168, 176 Atl. 902 (1935), *aff'd.*, 116 N. J. L. 362, 184 Atl. 743 (1936), *cert. denied*, 298 U. S. 678, 80 L. Ed. 1399 (1936).

In *Tilt v. Kelsey, supra*, New York's attempt to impose a succession tax on a decedent's estate was opposed on the ground that New Jersey had already determined that the decedent was domiciled in that State, by admitting his will to probate, and that succession taxes had already been paid under the law of New Jersey. It was held that New Jersey's decision was not binding on New York, and that New York had the right to determine independently the domicil of the deceased as a basis for its own jurisdiction. The Court said, in 207 U. S. at 52-53, 52 L. Ed. at 99-100:

> "That re-examination, however, must be confined to the single question whether, by the assessment of the tax, [by New York] full faith and credit has been denied to the judicial proceedings of the state of New Jersey, in violation of article 4, section 1, of the Constitution. In the consideration of this question, the first inquiry which presents itself is whether the adjudication of the New Jersey court, that Tilt was, at the time of his death, a resident of New Jersey, was conclusive upon the state of New York, a stranger to the proceedings. If it was, that is the end of the case; because then New York could not take the first step necessary to bring the estate within the provision of the tax law of that state. But, upon principle and authority, that adjudication, though essential to the assumption

> of jurisdiction to grant letters testamentary, was neither conclusive on the question of domicil, nor even evidence of it in a collateral proceeding. . . . It follows that the full faith and credit due to the proceedings of the New Jersey court do not require that the courts of New York shall be bound by its adjudication on the question of domicil. On the contrary, it is open to the courts of any state, in the trial of a collateral issue, to determine, upon the evidence produced, the true domicil of the deceased."

An even closer analogy is found in the *Dorrance* case, *supra*. New Jersey was seeking to impose inheritance tax against the Dorrance Estate. Pennsylvania had already made a determination that the decedent was domiciled in Pennsylvania, and this decision had been upheld on appeal. 309 Pa. 151, 163 Atl. 303 (1932), *cert. denied*, 287 U. S. 660, 77 L. Ed. 570 (1932). By the law of Pennsylvania, a determination of that kind is deemed final and conclusive against all the world. Nevertheless, it was held that the New Jersey court had the right to determine, as a basis of it. own jurisdiction, that the decedent was domiciled in New Jersey. The logic and reasoning of the New Jersey Court justify setting forth a substantial portion of its opinion:

> "As has already been said, the appellants contend that this court is precluded from considering that issue [domicil]; that the decision of the Pennsylvania court is conclusive and controlling upon this court. With that contention this court is unable to concur.
>
> The contention, more fully expressed, is that (1) Pennsylvania decision or decree was a final decree in a proceeding in rem; that (2) the res in that proceeding was the assessment and levy of transfer tax in respect of the intangible personal property of the decedent; (3) that the right of Pennsylvania to assess and levy such tax in a decedent's estate was, and must necessarily be, predicated upon the fact that the decedent was domiciled in Pennsylvania; (4) that under the law

of Pennsylvania the determination of the Pennsylvania court in a proceeding of this kind is final and conclusive against all the world; (5) that, by virtue of article 4, section 1, of the Constitution of the United States, and of the statute enacted to carry that provision into effect (the Act of Congress of May 26, 1790, c. 11; U. S. Rev. Stat. Sec. 905 (28 USCA Sec. 687), that adjudication by the Pennsylvania court must be accorded the same effect by the New Jersey courts, and hence must, in this appeal, be regarded as final and conclusive against the state of New Jersey (notwithstanding New Jersey was not a party to the Pennsylvania proceedings) and as a conclusive adjudication against the claim by New Jersey of the right to levy transfer inheritance tax in respect to the intangible personalty of the Dorrance estate.

The correctness of the first three propositions is not questioned; the correctness of the fourth may be assumed (but not decided); it is the fifth proposition which is incorrect, and which vitiates the conclusion of the argument.

The constitutional provision invoked by the appellants is commonly known as the full faith and credit clause. It is true that, under it, and the statute, the courts of this state are bound to give to the judicial proceedings in Pennsylvania the same faith and credit as they have by law and usage in the courts of Pennsylvania. But this is true only if the proceedings in the Pennsylvania court were within the jurisdiction of that court. It is always open to the courts of the sister state to inquire into the jurisdiction of the court which pronounced the judgment in question. When it is demanded of the courts of one state that full faith and credit be accorded to the judgment of a sister state, 'an inquiry into the jurisdiction (of the latter court) is always permitted, and if it be shown that the proceedings relied upon were without the jurisdiction of the court, they need not be respected.' Tilt v. Kelsey, 207 U. S. 43, at page 59, 28 S. Ct. 1, 7, 52 L. Ed. 95;

Thompson v. Whitman, 18 Wall. 457, 21 L. Ed. 897; Thormann v. Frame, 176 U. S. 350, 20 S. Ct. 446, 44 L. Ed. 500; Burbank v. Ernst, 232 U. S. 162, 34 S. Ct. 299, 58 L. Ed. 551.

Concededly the courts of Pennsylvania had no jurisdiction to assess and levy the tax in question unless the decedent was domiciled in Pennsylvania. It is therefore open to this court, in the exercise of its right to inquire into the jurisdiction of the Pennsylvania court, to inquire into, ascertain, and determine whether or not the decedent was domiciled in Pennsylvania. If it be determined that he was not domiciled in Pennsylvania, then the determination of the Pennsylvania court that the transfer inheritance tax assessable in respect of his intangible personalty is due to the state of Pennsylvania is in nowise binding upon this court and can in no wise interfere with the right of this court to inquire and determine if the decedent was domiciled in this state, and to affirm and establish (if it finds that decedent was domiciled in this state) the right of this state to levy the tax in question and the validity of the tax so levied and now under appeal." See 170 Atl. at 602-03.

Applying the analogy in the case at bar, the United States District Court for the Southern District of Indiana, Indianapolis Division, a court of jurisdiction equal to, and coordinate with, that of the United States District Court for the Eastern District of Missouri, Eastern Division, had the right to determine the issue of subsidiary-parent relationship. If it found that National was not a subsidiary of Christopher, then the Missouri Court had no jurisdiction to approve National's petition and restrain the Indiana Trustee. In making that finding, the Indiana Court would not be bound by the Missouri finding of subsidiary-parent relationship, any more than the New Jersey court was bound by Pennsylvania's decree on the jurisdictional fact of domicil.

Thus the case of *Kalb v. Feuerstein*, 308 U. S. 433, 84

L. Ed. 370 (1940), cited at page 13 and discussed at pages 29-30 of Petitioners' Brief, is clearly distinguishable. In that case there was no question as to whether or not the debtor was a farmer. There was no question as to whether the bankruptcy court in Wisconsin had jurisdiction to act on debtor's petition under Section 75 of the Bankruptcy Act (11 U. S. C. A. 203). In the present case, the question as to whether National was a subsidiary of Christopher had to be answered in the affirmative by the courts below before the bankruptcy court in Missouri could have any claim at all to jurisdiction. Even then there would be the further question whether jurisdiction would be in the Missouri Court under Section 129 or only in the Indiana Court under Section 127 of the Chandler Act. These elements were not present in the *Kalb* case.

Ample evidence in the Record supports the Indiana Court's finding that National was not a subsidiary of Christopher. J. M. Brown testified under oath at the first meeting of creditors in National's bankruptcy proceedings on March 7, 1944, that he and A. B. Christopher, as individuals, were the owners of the capital stock of National, and that it was not the property of Christopher Engineering Company (R. 6). See also Exhibits 6, 7, and 8, in Appendix B of this Brief. The last balance sheet of Christopher Engineering Company, accompanying its petition for reorganization, makes no mention whatever of any stock ownership interest in National. See Exhibit "A" to Exhibit 1 in Appendix B of this Brief. As late as April 1, 1944, Brown and Christopher apparently both regarded themselves as individual owners of National's stock. See Exhibit "B" to Exhibit 10 in Appendix B of this Brief.

The Referee made an express finding of fact in his certificate on review that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company. See

Record, page 12. The Referee made an express finding in his order of May 3, 1944, confirming the sale, that title to the assets was in James C. Sansberry, Trustee. See Record, page 3. Notice of those proceedings had been sent to attorneys of record for Duggan, Trustee, and J. M. Brown. See Record, page 37.

The Referee's findings were adopted and affirmed by the Indiana Court in its order overruling the petitions for review. See Record, page 68.

The findings of a Referee, approved and affirmed by the District Judge, are binding, except in the event that they are clearly erroneous.

Brown v. Freedman, 125 F. (2d) 151 (C. C. A. 1st, 1942);

In re Peoria Braumeister Co., 138 F. (2d) 520 (C. C. A. 7th, 1943);

See Order No. 47, General Orders in Bankruptcy, 11 U. S. C. A. following Sec. 53;

Rule 52*a*, Federal Rules of Civil Procedure, 28 U. S. C. A. following Sec. 723 *c*.

This right in the Indiana Court to find that its own jurisdiction was not terminated, and that the Missouri Court had no jurisdiction to approve National's petition, is supported by well-established principles. In the case of *Old Wayne Mutual Life Ass'n v. McDonough*, 204 U. S. 8, 51 L. Ed. 345 (1907), the Court said:

> "The constitutional requirement that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state is necessarily to be interpreted in connection with other provisions of the Constitution, and therefore no state can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are

wanting in the due process of law enjoined by the fundamental law. 'No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.' Scott v. McNeal, 154 U. S. 34, 46, 38 L. Ed. 896, 901, 14 Sup. Ct. Rep. 1108. No state can, by any tribunal or representative, render nugatory a provision of the supreme law. And if the conclusiveness of a judgment or decree in a court of one state is questioned in a court of another government, Federal or state, it is open, under proper averments, to inquire whether the court rendering the decree or judgment had jurisdiction to render it. * * *

"Chief Justice Marshall had long before observed in Rose v. Himely, 4 Cranch, 241, 269, 2 L. Ed. 608, 617, that, upon principle, the operation of every judgment must depend on the power of the court to render that judgment. In Williamson v. Berry, 8 How. 495, 540; 12 L. Ed. 1170, 1189, it was said to be well settled that the jurisdiction of any court exercising authority over a subject 'may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings." See 204 U. S. at 15-16, 51 L. Ed. at 348.

In the case of *Milliken v. Meyer*, 311 U. S. 457, 85 L. Ed. 278 (1940), the Court said:

"Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is, of course, open to inquiry. (Cases cited.) But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.'" 311 U. S. at 462, 85 L. Ed. at 282.

C. The order of the Missouri Court had not become final on May 3, 1944, the date of the Indiana order ap-

proving the sale, and therefore it was subject to attack when asserted in opposition to that order.

Against the proposition that the Indiana Court could judge of its own jurisdiction and find that National was not a subsidiary of Christopher, the Petitioners have urged that under Section 149 of the Chandler Act (11 U. S. C. A. 549) the order of the Missouri Court was a conclusive determination of jurisdiction. It may be questioned whether the determination by the Missouri Court of subsidiary-parent relationship as a basis of jurisdiction, was entitled to any higher priority rating in the Indiana Court than the "conclusive" determination by Pennsylvania of domicil as a basis of jurisdiction, was accorded in the New Jersey Court, in the case of *In re Dorrance*, 115 N. J. Eq. 268, 170 Atl. 601 (1934), *cert. denied*, 298 U. S. 678, 80 L. Ed. 1399 (1936), discussed on pages 19-21 of this Brief, supra. It is not necessary, however, to decide that point. Section 149, by its express terms, provides that, "An order, *which has become final*, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court." There is no showing as to when the order of the Missouri Court became final. But it is clear that the order entered on April 19, 1944 (R. 61-66) was definitely not final on May 3, 1944, the date the Referee entered the order confirming the sale of assets which is under review.

In the report of the Senate Committee on the Judiciary, on Revision of the National Bankruptcy Act, it is stated that,

> "Section 149 is designed to foreclose all direct or collateral attack upon jurisdiction or venue, once the period for appeal from an order approving a petition has expired." Sen. Rep. No. 1916, 75th Cong., 3rd Sess. (1938) 27.

Obviously, if collateral attack on jurisdiction is foreclosed

once the period for appeal has expired, it is *permitted* prior to that time. Thus the order of the Missouri Court approving the petition was not final on May 3, 1944, and was subject to collateral attack when asserted as a bar to the jurisdiction of the Indiana Court.

Section 149 must also be construed in the light of Sections 161, 137 and 144 of the Chandler Act. Section 161 (11 U. S. C. A. 561) provides:

> "The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate."

Section 137 (11 U. S. C. A. 537) provides:

> "Prior to the first date set for the hearing provided in section 161 of this Act, an answer controverting the allegations of a petition by ~~or against~~ a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent, by any stockholder of the debtor."

Section 144 (11 U. S. C. A. 544) provides:

> "If an answer filed by any creditor, indenture trustee, or stockholder shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied."

See also Section 116 (4) (11 U. S. C. A. 516 (4)), which shows by its reference to "final decree," that the first order of approval of a petition is not final.

There is no showing that notice of hearing, to be held not less than 30 nor more than 60 days after approval of the petition, as required by Section 161, was ever given by the Missouri Court.

Text-writers on bankruptcy have discussed the question of when an order becomes final. In the discussion of Section 149 in 10 Remington, Bankruptcy (1939), Section 4404, the author says:

> "The use of the word 'final' indicates that the first order of approval (under either section 141, or sections 142 and 143, 11 U. S. C. A. sections 541-543) is to be considered 'interlocutory' in its nature until the expiration of the time prescribed by section 137 (11 U. S. C. A. sec. 537) for the filing of an answer (one or many) under section 144."

In Gerdes, *Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act* (1938) 52 Harv. L. Rev. 1, the author says, at 7-8:

> "In attempting to relieve practitioners of the dread that at some future date the entire proceedings will be put to naught by the discovery of a jurisdictional defect, the new statute provides that 'An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court.' The meaning which is to be attributed to the term 'final', however, is somewhat in doubt: it may mean the date when the time to appeal from the order has expired or when an appeal, if taken, has been determined and has resulted in an affirmance of the order; or it may refer to the possibility of further answers being filed. If the order of approval is to be given conclusive effect as to jurisdiction prior to

> the expiration of the time to file answers, one of the chief reasons for permitting such answers and for liberalizing the provisions as to their filing will have been destroyed. A fair interpretation of 'final' would seem to require that effect be given to both these meanings, with an order of approval not regarded as 'final' until both the time to file answers and appeals has expired, and until the order is affirmed in the event that an appeal has been taken."

Similarly, the restraining order issued by the Missouri Court (R. 65-66) did not have finality. A temporary restraining order is not a final determination which renders the issue involved res judicata.

Bohler v. Calloway, 267 U. S. 479, 69 L. Ed. 745 (1925);

Santowsky v. McKey, 249 Fed. 51 (C. C. A. 7th, 1918).

A judgment is always subject to collateral attack when it is sought to be enforced, or asserted, if the court rendering it did not have jurisdiction.

Williams v. North Carolina, 89 L. Ed. 1123 (Adv. Sheets, 1945);

Nardi v. Poinsatte, 46 F. (2d) 347 (N. D. Ind. 1931);

Petition of Taffel, 49 F. Supp. 109 (S. D. N. Y. 1941).

In the important bankruptcy case of *John Vallely v. Northern Fire & Marine Insurance Company*, 254 U. S. 348, 65 L. Ed. 297 (1920), Mr. Justice McKenna says, in 254 U. S. at 353-4, 65 L. Ed. at 300:

> "Courts are constituted by authority and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."

D. Petitioners' claim that the judgment of the Missouri Court was res judicata has no basis in fact, because Respondent was never before the Missouri Court.

The principles of res judicata require that before a judgment or decree of one court can be set up as a conclusive bar to proceedings in another court, it must have been a judgment (1) by a court of competent jurisdiction upon the same subject matter, (2) between the same parties, and (3) for the same purpose.

Aspden v. Nixon, 4 How. 467, 11 L. Ed. 1059 (1846).

For res judicata to apply, there must be identity of parties in the two actions.

Troxell, Adm'x v. Delaware, L. & W. Ry., 227 U. S. 434, 57 L. Ed. 586 (1913).

The Respondent in the case at bar was never before the Missouri Court. Nor was he ever given any notice of a hearing, as required by Section 161 of the Chandler Act (11 U. S. C. A. 561), or opportunity to file answer under Section 137 (11 U. S. C. A. 537).

The cases cited by Petitioners on the point that principles of res judicata apply to jurisdictional questions, were cases in which jurisdiction was litigated as a contested issue, or in which full opportunity to present objections was granted. In the case of *American Surety Co. v. Baldwin*, 287 U. S. 156, 77 L. Ed. 231 (1932), cited on page 13 of Petitioners' Brief, the Surety Company had entered a general appearance, made a motion to vacate, and appealed from the order on that motion, all in the State Court proceedings that were later brought into question in an independent proceeding in Federal Court. As Mr. Justice Brandeis pointed out,

> "There was an actual adjudication in the State Court of the question of the jurisdiction of the trial court to enter judgment. The scope of the issues

presented involved an adjudication of that issue." See 287 U. S. at 165, 77 L. Ed. at 237.

In the case of *Chicot County Drainage District v. Baxter State Bank*, 308 U. S. 371, 84 L. Ed. 329 (1940), cited at pages 13 and 28-29 of Petitioners' Brief, the Court specifically pointed out that the bondholders had full notice of the reorganization proceedings and ample opportunity to be heard in opposition to the decree that was held to bar their rights in a later suit. The Court said:

> "The answer in the present suit alleged that the plaintiffs (respondents here) had notice of this proceeding and were parties, and the evidence was to the same effect, showing compliance with the statute in that respect. As parties, these bondholders had full opportunity to present any objections to the proceeding, not only as to its regularity, or the fairness of the proposed plan of readjustment, or the propriety of the terms of the decree, but also as to the validity of the statute under which the proceeding was brought and the plan put into effect. Apparently no question of validity was raised and the cause proceeded to decree on the assumption by all parties and the court itself that the statute was valid." See 308 U. S. at 375, 84 L. Ed. at 333.

The proceedings in the Missouri Court in the case at bar were completely ex parte, without notice, and without final decree.

Discussing the *Chicot* case in *United States v. United States Fidelity & Guaranty Co.*, 309 U. S. 506, 84 L. Ed. 894 (1940), the court said:

> "In the Chicot County Drainage Dist. Case no inflexible rule as to collateral objection in general to judgments was declared. We explicitly limited our examination to the effect of a subsequent invalidation of the applicable jurisdictional statute upon an existing judgment in bankruptcy. To this extent the case

definitely extended the area of adjudications that may not be the subject of collateral attack. No examination was made of the susceptibility of such objection to numerous groups of judgments concerning status, extra-territorial action of courts, or strictly jurisdictional and quasi-jurisdictional facts." See 309 U. S. at 514, 84 L. Ed. at 899.

In the case of *Stoll v. Gottlieb*, 305 U. S. 165, 83 L. Ed. 104 (1938), the court said that res judicata applies when the question of jurisdiction has been decided "as a contested issue" and "after a party has his day in court, with opportunity to present his evidence and his view of the law." See 305 U. S. at 172, 83 L. Ed. at 109.

There was no contested issue in the Missouri Court. The Respondent did not have his day in court in those proceedings.

As stated in *Williams v. North Carolina*, 89 L. Ed. 1123 (Adv. Sheets, 1945), at 1126:

> "A judgment in one State is conclusive upon the merits in every other State, but only if the court of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment.
>
> 'It is too late now to deny the right collaterally to impeach a decree of divorce made in another State, by proof that the court had no jurisdiction, even when the record purports to show jurisdiction.' It was 'too late' more than forty years ago. German Sav. & L. Soc. v. Dormitzer, 192 U. S. 125, 128, 48 L. Ed. 373, 376, 24 S. Ct. 221 * * *."

It is one thing to reopen an issue that has been settled after appropriate opportunity to present their contentions has been afforded to all who had an interest in its adjudication. This applies also to jurisdictional questions. After a contest these cannot be

relitigated as between the parties. (Cases cited.) But those not parties to a litigation ought not to be foreclosed by the interested actions of others."

As pointed out in *Adam v. Saenger*, 303 U. S. 59, 82 L. Ed. 649 (1938),

> "In a suit upon the judgment of another state, the jurisdiction of the court which rendered it is open to judicial inquiry, and when the matter of fact or law on which jurisdiction depends was not litigated in the original suit it is a matter to be adjudicated in the suit founded upon the judgment." See 303 U. S. at 62, 82 L. Ed. at 652.

In no event could the order of the Missouri Court be res judicata, since it was not a final decree, and the rules of res judicata are not applicable where the judgment is not a final one.

G. & C. Merriam Co. v. Saalfield, 241 U. S. 22, 60 L. Ed. 868 (1916);

Joseph T. Ryerson & Son, Inc. v. Bullard Machine Tool Co., 79 F. (2d) 192 (C. C. A. 2d, 1935);

See Restatement, Judgments (1942) Secs. 41, 42.

II

Even if it should be determined that National was a subsidiary of Christopher, the judgment of the Courts below should be affirmed, because the Missouri Court had no jurisdiction to approve National's petition for reorganization.

The jurisdiction of bankruptcy courts to receive petitions is defined strictly in terms of venue. Section 112 of the Chandler Act (11 U. S. C. A. 512) provides that "the jurisdiction * * * of the court," in a Chapter X reorganization, "where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication." In a bankruptcy proceeding before

adjudication, the jurisdiction of the courts, as defined by Section 2 *a* (11 U. S. C. A. 11 *a*), is merely such as to enable them to "adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdiction for the preceding six months, etc." This geographical limitation on jurisdiction of course bars the right of the Missouri Court to receive National's petition for reorganization, unless any other "provisions of this chapter" enlarge the jurisdiction granted by Sections 112 and 2 *a*. Petitioners contend that Section 129 (11 U. S. C. A. 529) did so enlarge it. Yet Respondent submits that National, if it chose to seek reorganization, did not have the right to file a petition under Section 129, but was permitted to file only in the Indiana Court under Section 127 (11 U. S. C. A. 527). Petitioners were seeking a forcible change of venue, completely unauthorized by statute.

A. A subsidiary corporation can file petition for reorganization in the court which has approved the reorganization petition of its parent corporation only if it is an "original petition."

Section 129 by its express language, permits the filing only of an "original petition." The use of the term "original petition" is clear evidence of Congressional intent. "Original petition" has both historical and legal meaning. Under the provisions of Section 77 B of the old Bankruptcy Act (11 U. S. C. A. 207), predecessor to Chapter X of the Chandler Act, a corporation seeking reorganization was authorized to file "an original petition, or, before adjudication in an involuntary proceeding, an answer, or in any proceeding pending in bankruptcy, * * * a petition stating the requisite jurisdictional facts."

Not only is the term "original petition" used in Sections 128 and 129 of the Chandler Act (11 U. S. C. A. 528,

529), but it is also used in Section 102 (11 U. S. C. A. 502, set forth in Appendix A of this Brief, at page 51). In each instance, these words of art are employed by way of contrast to a situation in which there is a prior bankruptcy proceeding pending.

Particularly enlightening is the language of Judge Learned Hand in the case of *In re Paramount Publix Corporation*, 85 F. (2d) 42 (C. C. A. 2d, 1936). He says:

> "Subdivision (a) of section 77B (11 U. S. C. A. sec. 207 (2) provides for three situations: 'An original petition'; 'an answer' in bankruptcy before adjudication; 'a petition' before or after adjudication 'in any proceeding pending in bankruptcy.' Why the debtor should have the alternative of answer or petition before adjudication, or whether there is any but a nominal difference, we need not inquire. *What is important is that 'an original petition' is contrasted with a petition or answer in a 'proceeding pending in bankruptcy.'* When either of these is so interposed, reorganization becomes an amplification or new end product of the original bankruptcy, just as though the bankrupt or the alleged bankrupt had proposed a composition, of which indeed reorganization is a variant and an outgrowth, and on the basis of which its constitutionality was upheld." (Our italics.) See 85 F. (2d) at 44.

B. Under the proper construction of Section 129, given in the Court below, an "original petition" can be filed only when there is no pending bankruptcy proceeding by or against the corporation.

The term "original petition," as used in Chapter X of the Chandler Act has been construed in the case of *Clark Bros. Co. v. Portex Oil Co.*, 113 F. (2d) 45 (C. C. A. 9th, 1940). The Court said, in 113 F. (2d) at 47:

> "Original jurisdiction of proceedings under chapter 10 (sections 101-276) of the Bankruptcy Act is

vested in courts of bankruptcy, including, of course, the district courts of the United States. The Oregon court, being a district court of the United States, is a court of bankruptcy.

A proceeding under Chapter 10 may be commenced (1) by filing a petition in a pending bankruptcy proceeding; (2) by filing an original petition. In this case, there was no pending bankruptcy proceeding. Hence, the debtor could and did file an original petition."

On this same point, in Gerdes, *Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act* (1938), 52 Harv. L. Rev. 1, the author says, at page 5:

"If a bankruptcy proceeding is pending, the reorganization petition must be filed in that proceeding; otherwise, an original petition is filed."

Judge Sparks in his opinion on this case in the Circuit Court of Appeals, has interpreted Sections 126, 127, 128 and 129 (11 U. S. C. A. 526-529) as parts of a unified whole. His logic is unassailable. He said, in 149 F. (2d) at 551-52, (R. 98-99):

"Sub-Chapter IV of Chapter X deals with the petition for reorganization, including the right to file and the venue: 11 U. S. C. A. sections 526-529. They should be construed together.

Section 526 merely provides that a corporate debtor or its creditors may file a petition for reorganization of such debtor, providing there is no pending petition for reorganization of the same debtor.

Section 527 provides that *if there is a bankruptcy proceeding pending* against the debtor corporation, and we take this to mean an insolvent debtor against or by whom no petition for reorganization has yet been filed, then and in that event such a petition may be filed in that proceeding, either before or after adjudication.

Section 528 provides that *if no bankruptcy proceeding is pending* against the debtor corporation, and we construe this is to refer to *any* bankruptcy proceeding, then and in that event an *original* petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months.

If a corporation be a subsidiary, as provided in section 529, an *original* petition for reorganization may be filed by or against the debtor corporation as provided in section 528, or in the court which has approved the parent company's petition for reorganization.

It will be noted that section 528 deals only with estates where no bankruptcy proceeding of any kind is pending. In that event an *original* petition is permitted to be filed by the debtor or by its creditors. We interpret this to mean that the petition should be an original one, in the sense that no other petition in bankruptcy is pending in any jurisdiction with respect to the debtor's estate. No other interpretation has been suggested. Section 529 contains the same word presumably with the same intended meaning, otherwise the sentence would express an absurdity, because section 528 deals only with estates where no bankruptcy proceeding is pending with respect to such estate. Appellants contend that National was authorized and chose to file its alleged petition under section 529 rather than section 528. However, it is clear there was no authority to choose nor was a choice of jurisdiction made, for National could not then have filed under section 528, because there was then pending in Indiana an involuntary proceeding in bankruptcy against it; and for the further reason that its alleged petition for reorganization in Missouri was not an *original* one as required by both sections 528 and 529.

The cited sections of the statute seem to fully cover every conceivable contingency pertaining to the venue

of a petition for reorganization of a corporation; and we think our interpretation of them gives full force to each phrase and clause thereof. It is apparent that appellants' interpretation does not do this. True, section 529 does not contain the words found in section 528—"If no bankruptcy proceeding is pending." However, we think the substance of this limitation is contained in section 529, by the requirement that the petition shall be an original one. Such construction gives full effect to every word of the Act, and expresses what we consider the clear intention of Congress."

This becomes even more conclusive—although further reinforcement seems unnecessary—if the provisions of Sections 126 to 129 are read as one unbroken paragraph, omitting headings and section numbers.[1] It then follows, without the slightest doubt, that a subsidiary can file its original petition under Section 129 only if no bankruptcy proceeding is pending.

It is, of course, clear that National could have filed its petition for reorganization in the Indiana Court, under Section 127, even after adjudication. Then it could have applied for a transfer of the proceedings to the Missouri Court, under the provisions of Section 118 (11 U. S. C. A. 518), if the interests of the parties would best be served by

[1] "A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to $5,000 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter. A petition may be filed in a pending bankruptcy proceeding, either before or after the adjudication of a corporation. If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 128 of this Act or in the court which has approved the petition by or against its parent corporation."

such transfer. This was the procedure envisaged by the Senate Committee on the Judiciary at the time of the revision of the Bankruptcy Act.

> "Section 118, derived from section 77B (a), prescribes the conditions upon which proceedings begun in one jurisdiction may be transferred to another. Thus, for example, where a proceeding by or against a debtor is pending in one jurisdiction, and a proceeding by or against its subsidiary, as defined in section 106, is pending in another, one or the other of such proceedings may be transferred so that both may proceed in the same court, if the interests of the parties would be best served by such transfer." Sen. Rep. No. 1916, 75th Cong., 3rd Sess. (1938) 24-25.

And transfers of proceedings by a subsidiary or a parent have been permitted by the courts.

In re Botany Consolidated Mills, Inc., 10 F. Supp. 267 (D. Del. 1935);

In re American Fuel & Power Co., 32 F. Supp. 107 (D. Del. 1940).

Both reason and authority support the view that a petition for reorganization should be filed in the same forum in which a bankruptcy proceeding is pending. One of the prerequisites to approval of a petition is that it must have been filed in good faith. Section 141 (11 U. S. C. A. 541). "A petition shall be deemed not to be filed in good faith if * * * a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding." Section 146 (11 U. S. C. A. 546). The court in which those prior proceedings are pending may be the court best able to determine whether the interests of creditors and stockholders can be served better by reorganization or by liquidation.

Cf. Marine Harbor Properties, Inc. v. Mfrs. Trust Co., 317 U. S. 78, 87 L. Ed. 64 (1942);

Fidelity Assurance Ass'n v. Sims, 318 U. S. 608, 87 L. Ed. 1032 (1943).

Consider also the opinion of the House Committee on the Judiciary as to the proper jurisdiction for corporate reorganization under Chapter X of the Chandler Act. In H. R. Rep. No. 1409, 75th Cong., 1st Sess. (1937), the Committee said, at page 40:

> "In general, the bill sets up as the only valid criterion for jurisdiction the company's principal place of business, or the place of location of its principal assets. Selection of any other jurisdiction usually means conducting the reorganization at great distances from the place or places where the corporation does its business. It means putting investors to great expense and difficulty if they wish to appear and participate in the proceedings. *It means, also, that inside groups who may be in control of a reorganization, are able to search around for the jurisdiction in which they estimate it is least likely, for a number of reasons, that their conduct of the corporation will be examined;* that they will be exposed to liability, and their perpetuation in office endangered. These defects have been met and corrected by the bill in limiting the venue of reorganization proceedings to the principal place of business or the location of the corporation's principal assets, for the greater part of the 6 months preceding the filing of the petition." (Our italics.)

The interpretation of Section 129 given by the court below, which Respondent submits is eminently correct and proper, does not deny meaning but gives fitting effect to Section 148 (11 U. S. C. A. 548). The construction given to Section 148 must be consistent with the plain language of Section 127. "An order approving a petition shall operate as a stay of a prior pending bankruptcy"—provided the petition is filed in the court in which the prior

bankruptcy proceeding is pending. Under Section 127, a petition for reorganization can be filed at any stage of a pending bankruptcy proceeding. In an ordinary bankruptcy proceeding, the judge at an early stage makes an order of reference to a referee under Section 22 (11 U. S. C. A. 45). Yet, the petition for reorganization, containing the requisite allegations set forth in Section 130 (11 U. S. C. A. 530), is addressed to the judge and requires his order under Section 141 (11 U. S. C. A. 541). That order may then operate as a stay of a prior pending bankruptcy, which is being administered before the referee in the same court. To give meaning to Section 148 it is not necessary to permit a subsidiary to file for reorganization in a court of its own choosing, when a prior bankruptcy proceeding is pending against it.

One further consideration arises from a study of Sections 236 and 238 of the Chandler Act (11 U. S. C. A. 636, 638), set forth in Appendix A of this Brief, at page 54. If a reorganization proceeding is dismissed for failure to propose, confirm, or consummate a plan, and the reorganization petition had been filed in a prior pending bankruptcy, then the order of dismissal shall direct that bankruptcy be proceeded with, and the prior pending proceeding shall be reinstated.

If Petitioners are correct that they had a right to file in the Missouri Court, despite the pending bankruptcy in the Indiana Court, then the assets of National would go from Indiana control to Missouri control, and if reorganization proceedings were dismissed in Missouri, the assets would come back to Indiana control. Obviously this shuttling back and forth would be contrary to Congressional intent. Note that in Sections 236 and 238 mention is made of only two methods of filing petition for reorganization—filing under Section 127 in a pending bank-

ruptcy, and filing under Section 128 when there is no pending bankruptcy. No mention is made of filing for a subsidiary by some method other than that of Section 127 if there is a prior pending bankruptcy. Section 129, with its emphasis on "original petition" is clearly just an offshoot of Section 128: the right to file under Section 129 arises only when there is no pending bankruptcy.

C. Section 129 is far more than a mere venue statute, but is jurisdictional in its nature.

The jurisdiction of bankruptcy courts to receive petitions for reorganization is defined in terms of venue, under Sections 112 and 2 *a* of the Chandler Act. (11 U. S. C. A. 512, 11 *a*). Section 129 enlarges the jurisdiction granted by Section 112 only if two jurisdictional facts are present: (1) the corporation must be a subsidiary, and (2) it must be filing an "original petition"—that is, there must be no prior pending bankruptcy. Unless both these facts obtain, the Missouri Court in the present case is not merely a court of improper venue—it is a court without jurisdiction either of the person or the subject-matter.

In the case of *In re Hamilton Gas Co.*, 79 F. (2d) 97 (C. C. A. 2d, 1935), it was held that a corporation could not file petition for reorganization in New York when its business had been operated by equity receivers in West Virginia for the preceding six months, and a creditors' petition for reorganization had been filed in West Virginia just prior to the filing of the New York proceeding. The court said, in 79 F. (2d) at 98:

> "No jurisdictional basis for this petition for reorganization exists unless its principal place of business was in New York for the greater part of the six months preceding its filing."

Note that the discussion was not of venue, but of jurisdiction.

The case of *Fairbanks Steam Shovel Co. v. Wills*, 240 U. S. 642, 60 L. Ed. 841 (1916), cited by Petitioners at pages 15, 26, and 51 of their Brief, does not apply. The principal issue in that case was whether a chattel mortgage had been properly recorded, so as to be valid against a trustee in bankruptcy. It was held that the mortgage was invalid, since it had never been recorded in Cook County, Illinois, the "legal residence" of the bankrupt. Then it was objected that Cook County was in the Northern District of Illinois, while the bankruptcy proceedings and the controversy over the mortgage were in the United States District Court for the Southern District of Illinois. It was held that the parties had appeared in Court and by answering and making defense on the merits had consented to the jurisdiction, so that they could not later question it. In the instant case, there has been no consent by the Respondent to the jurisdiction of the Missouri Court. Further, in the *Fairbanks* case, it was insisted that the adjudication of bankruptcy was invalid, and that the trustee had no capacity to sue. It was held that the question of capacity was waived because not raised in the trial court. The adjudication, upon a creditors' petition, was held not open to collateral attack. An order of adjudication is a final order, far different from the preliminary ex parte order of the Missouri Court, which was bound to provide for notice of hearing under Section 161 (11 U. S. C. A. 561) and permit filing of answers under Section 137 (11 U. S. C. A. 537), and decide any issue raised by those answers under Section 144 (11 U. S. C. A. 544), before any final order could be issued. Jurisdiction over person and subject-matter, both questionable elements in the Missouri proceeding, can always be questioned, even in a collateral proceeding.

See *Old Wayne Mutual Life Association v. Mc-*

Donough, 204 U. S. 8, 15-16, 51 L. Ed. 345, 348 (1907);

Milliken v. Meyer, 311 U. S. 457, 462, 85 L. Ed. 278, 282 (1940).

D. The order of the Missouri Court had not become final on May 3, 1944, the date of the Indiana order approving the sale, and therefore it was subject to attack when asserted in opposition to that order.

The provisions of Section 149 of the Chandler Act (11 U. S. C. A. 549) do not apply, because the order of the Missouri Court had not become final on May 3, 1944.

See Sections 161, 137, 144, 116 (4) of Chandler Act (11 U. S. C. A. 561, 537, 544, 516 (4));

10 Remington, Bankruptcy (1939) Sec. 4404;

Gerdes, *Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act* (1938) 52 Harv. L. Rev. 1, 7-8.

The discussion and additional authorities under point I. c. at pages 24-28 of this Brief, also apply to this portion of the Argument.

III.

The judgment of the Circuit Court of Appeals should be affirmed, because the title and possession of the Indiana Trustee, acting under the order of the Indiana Court, could not be terminated by a summary proceeding in the Missouri Court.

A. The Missouri Court had no jurisdiction to adjudicate in a summary proceeding a controversy over property held adversely to the claim of the Missouri Trustee.

It is a well-established rule that a plenary suit is necessary, where property not in possession of the bankruptcy court is held under a substantial adverse claim. In the

leading case of *Taubel-Scott-Kitzmiller Company, Inc., v. Fox*, 264 U. S. 426, 68 L. Ed. 770 (1924), the Court said, through Mr. Justice Brandeis:

> "In no case where it lacked possession could the bankruptcy court, under the law as originally enacted, nor can it now (without consent) adjudicate in a summary proceeding the validity of a substantial adverse claim." See 264 U. S. at 433-34, 68 L. Ed. at 774.

This rule of ordinary bankruptcy applies also to proceedings for corporate reorganization.

> *Warder v. Brady*, 115 F. (2d) 89 (C. C. A. 4th, 1940); *In re Mt. Forest Fur Farms of America, Inc.*, 122 F. (2d) 232 (C. C. A. 6th, 1941), *cert. denied sub nom. Fitzgerald v. Gulf Refining Co.*, 314 U. S. 701, 86 L. Ed. 561 (1942).

In the *Warder* case, *supra*, in ruling that a trustee in reorganization under Chapter X must proceed by plenary suit against a special receiver in equity who had a substantial adverse claim to a fund in his possession, the court said:

> "It seems clear that the bankruptcy court under Ch. X has jurisdiction to entertain all suits to which its trustee or the debtor in possession is a party, even though they be instituted against adverse claimants.
>
> * * * *
>
> It does not follow, however, that the jurisdiction of the bankruptcy court over suits against an adverse claimant may be summarily exercised. The statute does not so provide, and under the well established procedural rule of the ordinary bankruptcy courts, as we have seen, suits by a trustee to recover property from an adverse claimant in possession must take the form of a plenary action. This is especially true when the title to property is in dispute." See 115 F. (2d) at 94.

Similarly, in the *Mt. Forest Fur Farms* case, a 77 B proceeding, the court said:

> "Neither exclusive jurisdiction of the debtor nor power to issue process outside the district confers upon the bankruptcy court the power, in a summary proceeding, to decide, without the consent of an adverse claimant, a controversy concerning property in his possession, unless his claim be merely colorable. Were it otherwise, every bona fide possessor of property held adversely to a bankrupt could be haled into a distant Federal Court to defend his right to the property whenever the trustee in a reorganization proceeding should choose to corral him summarily." See 122 F. (2d) at 239.

B. The Indiana Trustee had a very substantial adverse claim, and was entitled to a plenary suit.

Under the rule of the *Taubel-Scott-Kitzmiller* case, and the subsequent cases involving corporate reorganization that have followed it, the Indiana Trustee not only had possession of the assets of National, but his claim to those assets under order of the Indiana Court was substantial, and adverse to the claim of the Missouri Trustee. The Indiana Trustee had title to those assets by order of a court whose record contained sworn testimony that the stock in National Aircraft Corporation was owned by J. M. Brown and A. B. Christopher as individuals, and that Christopher Engineering Company was not the owner of that stock in any way. That claim was substantial, not colorable, and was definitely adverse to the claim of a Trustee appointed pursuant to a petition signed on behalf of National by the same J. M. Brown and alleging that the majority of the capital stock of National was owned directly or indirectly by Christopher Engineering Company (R. 58). The adverse nature of the claim of the Indiana Trustee becomes forcibly clear when one recalls that only if Na-

tional were a subsidiary of Christopher could the Missouri Court have any shred of claim to jurisdiction over the whole proceeding. An equally strong element of the substantial adverse claim of the Indiana Trustee is the fact that no "original petition" had been filed with the Missouri Court as required by Section 129 (11 U. S. C. A. 529), and therefore his title by virtue of the Indiana proceedings was unimpaired.

From these facts it follows that the issues could not be decided in a summary proceeding, as the Missouri Court attempted, but the Indiana Trustee was fully entitled to a plenary suit.

IV.

The judgment of the Circuit Court of Appeals should be affirmed, because the Petitioners were estopped by their conduct and course of action in the Indiana bankruptcy proceedings from questioning the jurisdiction of the Indiana Court.

The factual basis for the foregoing proposition is set forth in our chronological statement of facts on pages 3-9 of this Brief, so we shall not repeat in detail. This shows such a course of conduct on the part of the bankrupt and Missouri Trustee alike as to render their eleventh hour attempt at evasion inequitable and unconscionable.

A. Duggan, Trustee of Christopher, had appeared in the Indiana Court by Attorneys of record, and J. M. Brown, signer of National's petition for reorganization in the Missouri Court, had appeared in the Indiana Court personally and by attorneys; after January 25, 1944, neither party questioned the jurisdiction of the Indiana Court and both parties acquiesced fully in its actions until the very eve of sale.

The principle of equitable estoppel which we are as-

serting, as stated by Lord Campbell in an old English case, was quoted by this Court in the case of *Leather Mfrs. Nat. Bk. v. Morgan*, 117 U. S. 96, 29 L. Ed. 811 (1886):

> "'If a party has an interest to prevent an act being done, has full notice of its having been done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous license.'" See 117 U. S. at 113, 29 L. Ed. at 818.

Petitioners standing by, permitting administration to be had and an order of sale to be entered, with resultant expense, have created just such an estoppel.

The doctrine of estoppel is well stated in the case of *In re Walton Hotel Co.*, 116 Fed. (2d) 110 (C. C. A. 7th, 1940). It was said in that case, as might as truly be said in the instant case:

> "No clearer case of estoppel could exist. The law does not permit one to stand by in silence while, with his knowledge, judicial proceedings are in progress affecting his rights and withhold objections to alleged erroneous proceedings until certain bona fide rights have intervened and then challenge their validity on account of such error. He who remains silent when he ought to speak cannot be heard to speak when he should be silent." See 116 F. (2d) at 112.

B. The Indiana Trustee, in reliance on the representations and acquiescence of Duggan, Trustee of Christopher, and of J. M. Brown, officer of the bankrupt, spent several thousand dollars in preserving the assets and property of National Aircraft Corporation and in preparing those assets for sale and in advertising and effecting the sale.

Not only were these services performed, but a group of from 300 to 400 prospective purchasers were assembled. The unexpected stoppage of such sale would, if effective, have meant not only the expense of several thousand dollars to the estate, but detriment, damage and expense to all the bidders who had travelled many miles, responsive to an advertisement of the United States Court. The prestige of the Court would have suffered and attendance at future sales would have been materially affected if such eleventh hour surprise procedure could operate to interfere with the orders and conduct of a court of co-ordinate jurisdiction.

Another pertinent expression on the subject of estoppel is contained in the case of *Lebold v. Inland Steel Co.*, 125 F. (2d) 369 (C. C. A. 7th, 1941), *cert. denied*, 316 U. S. 675, 86 L. Ed. 1749 (1942).

The Court says, in 125 F. (2d) at 375:

> "Estoppel arises only when one has so acted as to mislead another and the one thus misled has relied upon the action of the inducing party to his prejudice. Shortly stated, one may not assume a position inconsistent with a former position to the prejudice of his adversary. Texas Co. v. Gulf Refining Co., 5 Cir., 26 Fed. (2d) 394; Pomeroy Equity Jurisprudence, Sec. 804. It is the injury accruing from inducement or silent acquiescence which creates the estoppel."

In *Clinton Trust Co. v. John H. Elliott Leather Co.*, 132 Fed. (2d) 299 (C. C. A. 2nd, 1942), it is stated:

> "Parties in interest who have invoked or accepted the jurisdiction of the bankruptcy court to determine their claim to the debtor's assets may not thereafter attempt to challenge that jurisdiction." (Cases cited). See 132 F. (2d) at 304.

Petitioner Duggan, as Trustee of Christopher, came to

the Indiana Court seeking the assets of National, and attempting to prevent the appointment of a Receiver (R. 15). His attorney and National and its attorneys, came to the first meeting of creditors and proposed a plan for sale of the assets to a new corporation (R. 7). How can they now challenge that jurisdiction or say they did not accept it?

CONCLUSION

It is respectfully submitted that the judgment of the Court below should be affirmed. The Indiana Court had the right to determine that its own jurisdiction, validly acquired, was not terminated by the proceedings in the Missouri Court, since its own record showed that National Aircraft Corporation was not a subsidiary of Christopher Engineering Company. The finding, that National was not a subsidiary of Christopher, was a jurisdictional fact, giving the Indiana Court full authority to confirm the sale of assets by the Indiana Trustee.

Even granting that National was a subsidiary, something never conceded but earnestly contested and denied, the Missouri Court still had no jurisdiction to approve National's petition for reorganization, since it was not an "original petition" as required by Section 129 of the Bankruptcy Act. An interpretation that would permit a petition for reorganization to be filed in one Court while a bankruptcy proceeding against the same corporation was pending in another court, would deny to the term "original petition" the historical and legal meaning that Congress intended.

The Missouri Court had no jurisdiction in a summary proceeding to adjudicate the substantial adverse claim of the Indiana Trustee, holding possession under order of the Indiana Court. A plenary suit was required. Going

beyond every legal argument in this case is the strong equitable estoppel against the Petitioners herein, because of their conduct in the Indiana proceedings, acquiescing in every determination and every order until the very eve of sale. On any or all these grounds, the judgment of the Courts below should be affirmed.

Respectfully submitted,

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RALPH BAMBERGER,
ISIDORE FEIBLEMAN,
CHARLES B. FEIBLEMAN,
Attorneys for Respondent.

APPENDIX A

Additional Sections of Chandler Act Pertaining to Proceedings under Chapter X.

In addition to the Sections of the Chandler Act quoted in the main body of Respondent's Brief, the following additional sections bearing on Chapter X proceedings are respectfully set forth:

* * *

"Sec. 102. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: Provided, however, That Section 23, subdivision h and n of section 57, section 64, and subdivision F of section 70, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 128 of this Act, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 127 or 128 of this Act except where an adjudication had previously been entered. (11 U. S. C. A. 502.)

"Sec. 118. The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district, regardless of the location of the principal assets of the

debtor or its principal place of business, if the interests of the parties will be best served by such transfer. (11 U. S. C. A. 518.)

"Sec. 120. Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices to be given under this chapter. (11 U. S. C. A. 520.)

"Sec. 130. Every petition shall state—

"(1) that the corporation is insolvent or unable to pay its debts as they mature;

"(2) the applicable jurisdictional facts requisite under this chapter;

"(3) the nature of the business of the corporation;

"(4) the assets, liabilities, capital stock, and financial condition of the corporation;

"(5) the nature of all pending proceedings affecting the property of the corporation known to the petitioner or petitioners and the courts in which they are pending;

"(6) the status of any plan of reorganization, readjustment, or liquidation affecting the property of the corporation, pending either in connection with or without any judicial proceeding;

"(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter XI of this Act; and

"(8) the desire of the petitioner or petitioners that a plan be effected (11 U. S. C. A. 530).

"Sec. 137. Prior to the first date set for the hearing provided in section 161 of this Act, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee, or, if the debtor is not insolvent, by any stockholder of the debtor. (11 U. S. C. A. 537.)

"Sec. 146. Without limiting the generality of the meaning of the term 'good faith', a petition shall be deemed not to be filed in good faith if—

"(1) the petitioning creditors have acquired their claims for the purpose of filing the petition; or

"(2) adequate relief would be obtainable by a debtor's petition under the provisions of Chapter XI of this Act; or

"(3) it is unreasonable to expect that a plan of reorganization can be effected; or

"(4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding. (11 U. S. C. A. 546).

"Sec. 161. The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate. (11 U. S. C. A. 561).

"Sec. 228. Upon the consummation of the plan, the judge shall enter a final decree—

"(1) discharging the debtor from all its debts and lia-

bilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

"(2) discharging the trustee, if any;

"(3) making such provisions by way of injunction or otherwise as may be equitable; and

"(4) closing the estate." (11 U. S. C. A. 628.)

"Sec. 236. If no plan is proposed within the time fixed or extended by the judge, or if no plan proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

"(1) where the petition was filed under section 127 of this Act, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this Act; or

"(2) where the petition was filed under section 128 of this Act, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this Act, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders. (11 U. S. C. A. 636.)

"Sec. 237. Upon the dismissal of a proceeding under this chapter, where the petition was filed under section 128 of this Act, the judge shall enter a final decree discharging the trustee, if any, and closing the estate, except as other-

wise provided by section 259 of this Act. (11 U. S. C. A. 637).

"Sec. 238. Upon the entry of an order directing that bankruptcy be proceeded with—

"(1) where the petition was filed under section 127 of this Act, the bankruptcy proceeding shall be deemed reinstated and shall thereafter be conducted, so far as possible, as if the petition under this chapter had not been filed; or where the petition was filed under section 128 of this Act, the proceeding shall thereafter be conducted so far as possible, in the same manner and with like effect as if an involuntary petition for adjudication had been filed at the time when the petition under this chapter was filed, and a decree of adjudication had been entered at the time when the petition under this chapter was approved." (11 U. S. C. A. 638.)

APPENDIX B

The proceedings included in this Appendix are set forth for the information of the Court, for the reason that they were also before the United States Circuit Court of Appeals for the Seventh Circuit under the following circumstances:

The Petitioners, Appellants below, in their Brief filed with the United States Circuit Court of Appeals for the Seventh Circuit, on November 21, 1944, included as Addenda the order Approving Petition and Appointing Trustee in the original Christopher Engineering Company reorganization proceedings, which is Exhibit 2 in this Appendix, and the Entry Approving Trustee's Bond, which is Exhibit 3 in this Appendix. Thereupon the Respondent, Appellee below, in order that the Court might have a more complete picture, included in his brief filed with the United States Circuit Court of Appeals for the Seventh Circuit the certified copies of pleadings and orders set forth as Exhibits 1, 4, 5, 6, 7, 8, and 9 herein.

Exhibit 10, which is a certified copy of the petition and proof of claim of J. M. Brown, filed in the National Aircraft Corporation bankruptcy proceedings in the Indiana Court on September 2, 1944, was not on file at the time the order was entered by the District Court on June 5, 1944 (R. 68). This Exhibit was, however, presented to the Circuit Court of Appeals at the time of the oral argument of this case on February 6, 1945 (R. 90). It shows that as late as April 1, 1944, A. B. Christopher and J. M. Brown both regarded themselves as individual owners of the stock of National Aircraft Corporation.

EXHIBIT No. 1

In the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of CHRISTOPHER ENGINEERING CO., A Corporation, Debtor.	In proceedings for the reorganization of a corporation. No. 10947

DEBTOR'S PETITION FOR CORPORATE REORGANIZATION

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI:

The petition of Christopher Engineering Company, a corporation, the above-named Debtor, respectfully states:

(1) The Debtor is a corporation duly organized and existing under the laws of the State of Missouri and has had its principal office and principal place of business

3615 Olive Street, St. Louis, Missouri, within the above Judicial District for a longer portion of the six months immediately preceding the filing of this petition than in any other Judicial District. The Debtor corporation was incorporated under the laws of the State of Missouri on June 11, 1942.

(2) The Debtor is a corporation as defined in the Bankruptcy Act which could be adjudged a bankrupt under the said Act and is not a municipal company or a banking corporation or a building and loan association, and is not a railroad corporation authorized to file a petition under Section 77 of the said Act.

(3) The Debtor is unable to pay its debts as they mature.

(4) The Debtor desires that a plan of reorganization be effected under the provisions of Chapter X of the Bankruptcy Act.

(5) The nature of the Debtor's business is tool designing.

(6) The nature of all pending proceedings affecting the property of the Debtor, so far as is known, and the Courts in which they are pending, are as follows: Joe Dubman, Plaintiff, vs. Christopher Engineering Company, a corporation, and A. B. Christopher, J. M. Brown and J. M. Brown, Trustee, and A. B. Christopher and J. M. Brown, doing business as Christopher Aircraft Co., and A. B. Christopher and J. M. Brown, doing business as Christopher Tooling Co., and A. B. Christopher and J. M. Brown, doing business as Christopher Engineering and Manufacturing Co., Defendants, Cause No. 68722 pending in the Circuit Court of the City of St. Louis, Division No. 3. This is a proceeding brought by the plaintiff for an accounting and for the appointment of a receiver and wherein the Court did, on the 17th day of December, 1943, appoint J. F. Duggan receiver of all the assets of the debtor corporation and

the Court did further, among other things, enter an order requiring the defendants to account to the plaintiff; that there is now pending in the St. Louis Court of Appeals as Cause No. 26596 a proceeding brought by the defendants in said action against the Honorable James E. McLaughlin, Judge of the Circuit Court of the City of St. Louis, Missouri, which proceedings are in the nature of a petition for a Writ of Prohibition to prevent the Circuit Court proceeding further in the above entitled action.

(7) The assets, liabilities, capital stock and financial condition of your petitioner are as follows:

(a) The assets of your petitioner consist of accounts receivable of the National Aircraft Corporation amounting to approximately $55,000; claim against Christopher Engineering and Manufacturing Co. of approximately $40,000, office equipment, drafting-room equipment, designs, etc., all of an aggregate fair value of approximately $100,000.

(b) The liabilities of your petitioner, exclusive of its capital stock and unpaid dividends, consist of accounts payable in the amount of approximately $89,000.

(c) The issued capital stock of your petitioner is $5,000 in preferred stock of the par value of $100 per share and $5,000 in common stock of no par value.

(d) The financial condition of your petitioner is fully set forth in the balance sheet dated as of September 30, 1943, marked "Exhibit A," annexed hereto and made a part hereof.

(8) In order for your petitioner to obtain relief, it is necessary that the rights of unsecured creditors of the debtor be modified and that an extension of the time of payment of unsecured debts be given your petitioner, and your petitioner cannot obtain adequate relief under Chapter

XI of the Bankruptcy Act. Your petitioner believes that its assets are of a value in excess of its total liabilities, but the nature of its assets is such that their true value is not readily realizable; a forced sale of said assets would bring substantially less than its total liabilities.

(9) It is the desire of your petitioner that a plan of reorganization be effected under the provisions of Chapter X of the Bankruptcy Act.

(10) No other petition by or against your petitioner is pending under Chapter X of said Act, nor any other bankruptcy proceeding initiated by a petition by or against your petitioner is now pending.

WHEREFORE, your petitioner prays:

(1) That an order be entered approving this petition.

(2) That a Trustee or Trustees be appointed who, in addition to the rights and powers vested in a Trustee appointed under Section 44 of the Bankruptcy Act, shall be vested with the rights and powers of a Receiver in Equity appointed by a Court of the United States for your petitioner's property, except such rights and powers as may be inconsistent with the provisions of Chapter X of said Act.

(3) That said Trustee be authorized, directed and empowered to operate the business and manage the property of your petitioner.

(4) That an order be entered directing the Receiver appointed by the Circuit Court of the City of St. Louis, Missouri, to turn over to your petitioner, or to the Trustee to be appointed herein by the Court, the business and assets of your petitioner and thereupon, that an order be entered giving directions for the conduct of your petitioner's business during the pendency of these proceedings.

(5) That the Receiver above mentioned, appointed by the Circuit Court of the City of St. Louis, Missouri, be enjoined and restrained from taking any steps of whatsoever kind or nature toward selling or in any other way affecting the assets of your petitioner.

That further proceedings may be had upon this petition in accordance with the provisions of Chapter X of said Act and that your petitioner have such other and further relief as is just.

CHRISTOPHER ENGINEERING COMPANY,
A Corporation

by

(S) A. B. CHRISTOPHER
President
Petitioner

NOAH WEINSTEIN
GEO. O. DURHAM
B. SHERMAN LANDAU

Attorneys for Petitioner

STATE OF MISSOURI }
CITY OF ST. LOUIS } SS:

A. B. Christopher makes solemn oath that he is President of the Christopher Engineering Company, a corporation, the petitioner named in the foregoing petition, and is duly authorized to make said petition and this affidavit in its behalf, and that the statements contained in said petition are true according to the best of his knowledge, information, and belief.

(S) A. B. CHRISTOPHER

Subscribed and sworn to before me this 24th day of December, 1943.

(S) NOAH WEINSTEIN
Notary Publie

(SEAL)

My commission expires: March 13th, 1944.

Endorsed:

"Filed Dec. 27, 1943

Jas. J. O'Connor
Clerk."

CHRISTOPHER ENGINEERING COMPANY
Balance Sheet—Sept. 30, 1943

ASSETS

Current Assets		
Cash on Hand	$ 300.00	
Deposits	240.00	
Accounts Receivable:		
National Aircraft Corp.	54,979.43	
Offset unliquidated acct. Christopher Eng. & Mfg. Co., Est.	40,000.00	
Total Current Assets		$95,519.43
Fixed Assets		
Office Equipment	764.49	
Draughting Room Equipment	1,617.20	
Designs	5,000.00	
Electrical Installation	95.00	
Incorporating Expense	87.10	
Total Fixed Assets		7,563.79
Total Assets		$103,083.22

LIABILITIES AND CAPITAL

Liabilities			
Overdraft in checking account with bank		$ 267.18	
Accounts payable:			
A. B. Christopher	$6,500.00		
J. M. Brown	6,500.00		
Christopher Eng. & Mfg. Co.	75,681.11	88,681.11	
Accrued Taxes		339.80	
Total Liabilities			89,288.09
Capital			
Preferred Stock		5,000.00	
Non Par Value Common Stock		5,000.00	10,000.00
Operating Profit			3,795.13
			$103,083.22

"EXHIBIT A"

JOINT RESOLUTION AUTHORIZING DEBTOR'S PETITION

WHEREAS dissension has arisen between the undersigned constituting a majority of the Board of Directors and owning a majority of the shares of stock of the Christopher Engineering Company and Joe Dubman, being the minority of said Board of Directors, and,

WHEREAS, the said Joe Dubman, in hostility to the majority of the Board of Directors and to the corporation has heretofore instituted his suit in the Circuit Court of the City of St. Louis against the corporation, and the majority of the Board of Directors, the purpose of which

suit is for the appointment of a receiver and the seizure of all the assets of the corporation, and,

WHEREAS, by reason thereof no formal meeting of the Board of Directors or stockholders can be held, and,

WHEREAS, in the judgment of the undersigned majority of said Board of Directors and stockholders, the pendency of said suit and the financial condition of the said corporation is such as to be disastrous to the corporation, its creditors and stockholders,

NOW THEREFORE BE IT RESOLVED:

That in the judgment of the undersigned it is desirable and for the best interests of this corporation, its creditors, stockholders and other interested parties, that a petition for reorganization of this corporation be filed under the provisions of Chapter X of the Act of Congress relating to bankruptcy; and it is further

RESOLVED that the form of petition under said Chapter X, presented to this meeting be, and the same hereby is, approved and adopted in all respects, and that the President or Vice-President of this corporation be, and he hereby is, authorized and directed, on behalf of and in the name of this corporation, to execute and verify a petition substantially in such form and to cause the same to be filed with the District Court of the United States for the Eastern District of the Eastern Judicial District of Missouri; and it is further

RESOLVED that the officers of this corporation be, and they hereby are, authorized to execute and file all petitions, schedules, lists and other papers and to take any and all action which they may deem necessary or proper in connection with such proceedings

under said Chapter X, and in that connection to retain and employ all assistance by legal counsel or otherwise which they may deem necessary or proper with a view to the successful termination of such proceedings.

SIGNED and delivered this 23rd day of December, 1943.

(S) A. B. CHRISTOPHER

President.

(S) J. M. BROWN

Vice-President.

United States of America
Eastern District of Missouri } ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original DEBTOR'S PETITION FOR CORPORATE REORGANIZATION filed December 27, 1943, in the Matter of CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor, in Proceedings for the Reorganization of a Corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 19th day of May, A. D., 1944.

JAMES J. O'CONNOR, Clerk.

By JOHN A. OLDENDORPH,

Deputy Clerk.

(SEAL)

EXHIBIT No. 2

In the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of Christopher Engineering Company, a corporation, Debtor.	In proceedings for the reorganization of a corporation. No. 10947

Order Approving Petition and Appointing Trustee.

At St. Louis, in said division of said district, this 27 day of December, 1943.

This cause, coming on to be heard on the petition of Christopher Engineering Company, the above-named debtor, praying that proceedings be had under Chapter X of the Act of Congress relating to bankruptcy, and it appearing that no notice of said hearing should be given, and after hearing attorneys for said Debtor in favor of said petition,

Now, upon said petition, and all the proceedings had before me at the said hearing, and due deliberation having been had thereon; the

Court Does Find

1. That the indebtedness of Christopher Engineering Company, the above-named debtor, liquidated as to amount and not contingent as to liability, is less than Two Hundred and Fifty Thousand Dollars ($250,000.00).

2. That Jerome F. Duggan, Esq., is a disinterested person within the meaning of Section 158 of the Act of Congress relating to bankruptcy and is qualified to be the trustee herein; and the

Court Is Satisfied and Does Find

3. That the said petition of Christopher Engineering Company, said debtor, complies with the requirements of Chapter X of said Act.

4. That the said petition of Christopher Engineering Company, said debtor, has been filed in good faith; and it is

Ordered, Adjudged and Decreed

5. That said petition be, and it hereby is, approved.

6. That Jerome F. Duggan, Esq. be, and he hereby is, appointed trustee of the estate of said debtor, and said trustee upon filing a bond, as hereinafter provided, shall be vested with all the title and, to the extent consistent with said Chapter X, shall be vested with the same rights, shall be subject to the same duties, and shall exercise the same powers as a trustee appointed pursuant to Section 44 of said Act, and shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of said debtor.

7. That within five (5) days after the entry of this order, the said trustee shall qualify by entering into bond to the United States in the sum of Twenty-five Thousand Dollars with such sureties as shall be approved by this court, conditioned for the faithful performance of his official duties.

8. That said trustee be, and he hereby is, authorized to operate the business and manage the property of said debtor until such time as this court shall otherwise prescribe, and during such operation and management, the said trustee shall file with this court, in duplicate, not later than the 15th day of each month, a report and summary of the operations of the business and the management of the

property of the within estate during the preceding month, which report shall include a classified statement of receipts and disbursements, indebtedness incurred, credit extended, contractual and other obligations assumed, and a profit and loss statement.

9. That without in any way limiting the generality of paragraphs numbered 6 and 8 hereof, and to the extent consistent with Chapter X of said Act, said trustee shall have full power and authority until the further order of this court.

(a) To employ, discharge and fix the compensation, salaries and wages of all managers, agents, employees and servants, as he may deem necessary and advisable for the proper operation of the business and the management, preservation and protection of the property of said debtor;

(b) To purchase or otherwise acquire for cash or on credit, such materials, equipment, machinery, supplies, services or other property, as he may deem necessary and advisable in connection with the operation of said business and the management and preservation of said property;

(c) To sell merchandise, supplies and other property, and to render services, for cash or on credit;

(d) To enter into any contracts incidental to the normal and usual operation of said business and the management and preservation of said property;

(e) To keep the property of the within estate insured in such manner and to such extent as he may deem necessary and advisable;

(f) To collect and receive all rents, issues, income, and profits, and all outstanding accounts, things in action and credits due or to become due to the within estate, and to

hold and retain all monies thus received to the end that the same may be applied under this and different or further orders of this court;

(g) To do any and all such things and to incur such other expenses as may be necessary and advisable in the proper management and conduct of the affairs of said debtor and in the preservation and protection of the property and assets of the within estate;

(h) To institute, prosecute, defend, compromise, adjust, intervene in or become a party to such other actions or proceedings in law or in equity, in state or federal courts, as may in his judgment be necessary or advisable for the protection, maintenance and preservation of the property and assets of the within estate.

10. That until the further order of this court, said trustee, in his discretion, be, and he hereby is, authorized to pay, from time to time out of any and all funds now or hereafter coming into his hands and available for such purposes;

(a) All taxes and similar charges lawfully incurred in the operation of the business and the preservation and maintenance of the property and assets of the within estate since the filing of said petition;

(b) All proper expenses and obligations incurred by him on or after the date of this order in operating the business and preserving and maintaining the property and assets of the within estate, as herein authorized, including among other expenses and obligations, the reasonable wages, salaries and compensation of all managers, agents, employees and servants, other than officers, employed by him;

(c) The cost of maintaining the corporate existence of said debtor, including necessary expenses for the preservation of records;

(d) The expense of printing and mailing and of publishing notices to creditors, stockholders and all other parties in interest of proceedings taken hereunder, and of printing the pleadings, motions, petitions and orders now on file or hereafter filed in this case reasonably necessary to be printed.

11. That said trustee shall close the present books of account of said debtor, as of the close of business on the date of the entry of this order, and shall open new books of account, as of the opening of business on the next succeeding business day, in which new books of account he shall cause to be kept proper account of his earnings, expenses, receipts, disbursements and all obligations incurred and transactions had in the operation of the business and the management, preservation and protection of the property of the within estate; and said trustee shall preserve proper vouchers for all payments made on account of such disbursements.

12. That said trustee be, and he hereby is, directed to investigate the acts, conduct, property, liabilities and financial conditions of said debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan, and shall make and deliver a report thereon to the judge not later than sixty (60) days from the date hereof, and, within ten (10) days after the delivery of such report, shall make application to the judge for a direction as to the form and manner of a brief statement thereof to be submitted to the creditors and stockholders and such other persons as the judge may designate.

13. That the 8th day of February, 1944, be, and it hereby is, fixed as the time and place for the hearing of objections to the retention in office of Jerome F. Duggan, Esq., as

trustee of said debtor, upon the ground that he is not qualified or not disinterested as provided in Section 156 of said Act.

14. That until final decree or the further order of this court, all creditors and stockholders, and all sheriffs, marshals and other officers, and their respective attorneys, servants, agents, and employees, and all other persons, firm, and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity against said debtor or said trustee in any court, or from executing or issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other processes for the purpose of impounding or taking possession of or interfering with or enforcing a lien upon any property owned by or in the possession of the said debtor or said trustee, and from doing any act or thing whatsoever to interfere with the possession or management by said debtor or said trustee of the property and assets of the within estate, or in any way interfere with said trustee in the discharge of his duties herein, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this court over said debtor and said trustee and their respective properties and all persons, firms or corporations owning any lands or buildings occupied by said debtor or said trustee or wherein is contained any property of the within estate be, and they hereby are, jointly and severally, stayed, pending the further order of this court, from removing or interfering with any such property. The proceedings in equity now pending in the Circuit Court of the City of St. Louis, State of Missouri, Division No. 3 thereof, Cause No. 68722, entitled Joe Dubman, plaintiff v. Christopher Engineering Company, et al., defendants, be, and it is hereby,

stayed, and J. F. Duggan, heretofore appointed Receiver in said Circuit Court proceedings be, and he is hereby, enjoined and restrained from taking any steps or action of whatsoever kind or nature affecting the property of the debtor corporation.

15. That the said trustee be, and he hereby is, directed to give notice of the hearings fixed herein at least thirty (30) days prior to the date of said hearings by mailing such notice to the creditors and stockholders of said debtor, as the same may appear upon the debtor's records or may be otherwise known to said trustee.

16. That this court reserves full right and jurisdiction to make at any time and from time to time such orders for the purpose of vacating, amplifying, extending, limiting or otherwise modifying this order, as the court shall deem proper.

Geo. H. Moore,
United States District Judge.

Endorsed:

"Filed Dec. 27, 1943

Jas. J. O'Connor,
Clerk."

EXHIBIT No. 3

Entry on Clerk's Docket, District Court of United States for the Eastern Division of the Eastern Judicial District of Missouri:

"Dec. 29, 1943 Bond of Jerome F. Duggan, Esq., as Trustee of Debtor, in the penal sum of $25,000.00, presented, approved and filed."

EXHIBIT No. 4

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DIVISION, EASTERN JUDICIAL DISTRICT OF MISSOURI

In re:
CHRISTOPHER ENGINEERING CO., A Corporation.
Debtor.

No. 10947

PETITION OF TRUSTEE

Comes now Jerome F. Duggan, Trustee in the above entitled cause, and shows to the Court that heretofore your Trustee has received as a stockholder of National Aircraft Company, a corporation, all of the assets of said National Aircraft Corporation, a corporation; and that your Trustee considered same as an asset of the debtor corporation, subject to the further order of this Court, and that this Court heretofore has enjoined any and all persons from interfering with your Trustee concerning said property and assets of National Aircraft Corporation, and your Trustee now states that since said orders aforesaid, bankruptcy proceeding have been instituted in the Federal Court at Indianapolis, Indiana, and your Trustee is in need of counsel to represent him in said bankruptcy proceedings.

(S) JEROME F. DUGGAN,
Trustee.

Subscribed and sworn to before me this 24th day of January, 1944.

(SEAL)

(S) LOUISE D. O'CONNELL
Notary Public.

My commission expires March 31st, 1945.

ENDORSED:

Filed Jan. 24, 1944,

Jas. J. O'Connor, Clerk.

United States of America } ss:
Eastern District of Missouri }

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original PETITION OF TRUSTEE, filed January 24, 1944, In Re: CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor, Cause No. 10947, pending in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 22nd day of April, A. D., 1944.

JAMES J. O'CONNOR, Clerk.
By ANNICE W. KINDER,
(SEAL) Deputy Clerk.

EXHIBIT No. 5

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DIVISION, EASTERN JUDICIAL DISTRICT OF MISSOURI

In re:
CHRISTOPHER ENGINEERING CO., A Corporation, Debtor. } No. 10947

ORDER

The Court having seen and examined the verified petition of Jerome F. Duggan, Trustee, for employment of counsel in the bankruptcy proceeding in Indianapolis, Indiana, hereby sustains said petition and said Trustee is hereby

ORDERED to employ Phillip O'Neill, attorney at law, of Anderson, Indiana, and Hubert Hickam, Attorney at Law, of Indianapolis, Indiana, to represent Jerome F. Duggan, Trustee, in the aforesaid proceedings.

(S) GEO. H. MOORE, Judge.

Filed Jan. 24, 1944.

EXHIBIT NO. 6

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

In the Matter of CHRISTOPHER ENGINEERING COMPANY, A Corporation, Debtor.	In proceedings for the reorganization of a corporation. No. 10947

CLAIM OF A. B. CHRISTOPHER

TO THE HONORABLE GEORGE H. MOORE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI:

The petition of A. B. Christopher respectfully represents:

(1) Your petitioner is the owner of 288½ shares of no par value stock of the National Aircraft Company, an Indiana corporation.

(2) That on or about the 18th day of January, 1944, Jerome F. Duggan, Trustee herein, filed his petition for an order directing your petitioner to forthwith endorse, deliver and surrender to said Trustee his stock holdings and stock certificates in said National Aircraft Company, and on said same date, this Court entered its order directing your petitioner to endorse, deliver and surrender his stock holdings aforesaid to said Trustee, and said order further provided that said delivery of said stock pursuant to said order should not in any way affect your petitioner's claim thereto. Your petitioner states that in compliance with said order, he did endorse and deliver to said Trustee his aforementioned 288½ shares of stock of the National Aircraft Company.

(3) Your petitioner states that he is entitled to the immediate possession of said 288½ shares of stock of the National Aircraft Company aforementioned.

WHEREFORE, your petitioner prays that this Court enter its order finding that your petitioner is the sole owner of the aforementioned 288½ shares of the stock of the National Aircraft Company, and that he is entitled to the immediate possession of said stock, and that Jerome F. Duggan, Trustee herein, be directed to forthwith turn over and deliver said shares of stock to your petitioner, and that the Court enter such further and other orders as it may consider proper in the premises.

A. B. CHRISTOPHER.

Attorneys for Petitioner.

State of Missouri }
City of St. Louis } ss:

I, A. B. Christopher, the petitioner named in the fore-

going petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

A. B. CHRISTOPHER.

Subscribed and sworn to before me this ——— day of ———, 1944.

———————————
Notary Public.

My commission expires: ———————.

Endorsed: "Filed
Feb. 25, 1944
Jas. J. O'Connor,
Clerk."

United States of America
Eastern District of Missouri } ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original Claim of A. B. CHRISTOPHER filed February 25, 1944 in the Matter of CHRISTOPHER ENGINEERING COMPANY, a Corporation, Debtor, in Proceedings for the Reorganization of a Corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 19th day of May, A. D., 1944.

JAMES J. O'CONNOR,
Clerk.

By JOHN A. OLDENDORPH,
Deputy Clerk.

(SEAL)

EXHIBIT NO. 7

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

In the Matter of CHRISTOPHER ENGINEERING COMPANY, A Corporation, Debtor.	In Proceedings for the reorganization of a corporation. No. 10947

CLAIM OF J. M. BROWN

TO THE HONORABLE GEORGE H. MOORE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI:

The petition of J. M. Brown respectfully represents:

(1) Your petitioner is the owner of 288½ shares of no par value stock of the National Aircraft Company, an Indiana corporation.

(2) That on or about the 18th day of January, 1944, Jerome F. Duggan, Trustee herein, filed his petition for an order directing your petitioner to forthwith endorse, deliver and surrender to said Trustee his stock holdings and stock certificates in said National Aircraft Company, and on said same date this Court entered its order directing your petitioner to endorse, deliver and surrender his stock holdings aforesaid to said Trustee, and said order further provided that said delivery of said stock pursuant to said order should not in any way affect your petitioner's claim thereto. Petitioner states that at the time of the entry of said aforementioned order, he was not in the possession of said 288½ shares of the stock of the National Aircraft Company for the reason that he has previously, on or about the 29th day of November, 1943, endorsed

and delivered all of said shares of stock to B. Sherman Landau as collateral security for a loan made by B. Sherman Landau to your petitioner in the principal amount of $6,000.00 which said loan was made by B. Sherman Landau to your petitioner at the same time said shares of stock were endorsed and delivered to B. Sherman Landau as security therefor; that, however, said B. Sherman Landau complied with said aforementioned order of this Court and did turn over and deliver said shares of stock to said Jerome F. Duggan, Trustee.

(3) Petitioner states that he is the sole and absolute owner of said 288½ shares of capital stock of the National Aircraft Company, subject to the lien of said B. Sherman Landau in the principal sum of $6,000.00, and that he is entitled to immediate possession of said shares of stock subject to said aforementioned lien.

Wherefore, your petitioner prays that this Court enter its order finding that your petitioner is the sole owner of the aforementioned 288½ shares of the capital stock of the National Aircraft Company, subject only to the lien of B. Sherman Landau securing the loan in the principal sum of $6,000.00, and that he is entitled to the possession of said shares of stock subject to said aforementioned lien, and that Jerome F. Duggan, Trustee herein, be directed to forthwith turn over and deliver said shares of stock to your petitioner subject to said aforementioned lien of B. Sherman Landau, and that this Court enter such further and other orders as it considers proper in the premises.

(S) J. M. BROWN

J. M. BROWN,
Attorney pro se.

State of Missouri, }
City of St. Louis, } ss:

I, J. M. Brown, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

J. M. BROWN.

Subscribed and sworn to before me this 14th day of February, 1944.

HENRY J. JACOBSMEYER,
Notary Public.

(SEAL)

My Commission expires June 2, 1944.

Endorsed: "Filed
Feb. 25, 1944
Jas. J. O'Connor,
Clerk."

United States of America
Eastern District of Missouri } ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original CLAIM OF J. M. BROWN, filed February 25, 1944, In the Matter of CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor, In Proceedings for the Reorganization of a Corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 19th day of May, A. D. 1944.

JAMES J. O'CONNOR,
Clerk.

By JOHN A. OLDENDORPH,
Deputy Clerk.

(SEAL)

EXHIBIT NO. 8

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

In the Matter of CHRISTOPHER ENGINEERING COMPANY, A Corporation, Debtor.	In Proceedings for the reorganization of a corporation. No. 10947

CLAIM OF B. SHERMAN LANDAU

TO THE HONORABLE GEORGE H. MOORE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI:

The petition of B. Sherman Landau respectfully represents:

(1) That on or about the 29th day of November, 1943, your petitioner loaned to J. M. Brown the principal sum of $6,000.00 and said J. M. Brown did, on that date, endorse and deliver to your petitioner, as security for said loan, 288½ shares of the capital stock of the National Aircraft Company, an Indiana corporation; that no part of said loan of $6,000.00 or interest due thereon, has been repaid to your petitioner, and that the full amount thereof, both principal and interest, is past due and unpaid.

(2) That on or about the 18th day of January, 1944, pursuant to an order of this Court of said same date, your petitioner delivered to Jerome F. Duggan, Trustee herein, said 288½ shares of said aforementioned stock, which said stock is now in the possession of said Trustee; that the order requiring your petitioner to deliver said stock to

said Trustee provided that your petitioner's claim would not in any way be affected by the delivery thereof to said Trustee.

(3) That said stock is subject to your petitioner's lien for the full amount of said unpaid loan in the principal amount of $6,000.00, plus accrued interest which is past due, and that your petitioner is entitled to the immediate possession of said 288½ shares of said aforementioned stock.

WHEREFORE, your petitioner prays that this Court enter its order directing the said Jerome F. Duggan, Trustee herein, to forthwith turn over and deliver to your petitioner said aforementioned 288½ shares of the capital stock of National Aircraft Company, and that your petitioner be authorized by this Court to liquidate said stock and apply the net proceeds derived therefrom as a credit on the aforementioned indebtedness due him from said J. M. Brown, and that this Court further direct your petitioner as to what steps to take with the proceeds received from the liquidation of said shares of stock in the event the proceeds received from the sale thereof by your petitioner are in excess of the indebtedness aforementioned due him from said J. M. Brown.

B. SHERMAN LANDAU

B. SHERMAN LANDAU
Attorney pro se.

State of Missouri }
City of St. Louis } ss:

I, B. Sherman Landau, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

B. SHERMAN LANDAU

Subscribed and sworn to before me this 14th day of February, 1944.

HENRY J. JACOBSMEYER,
Notary Public.

(SEAL)

My Commission expires June 2, 1944.

Endorsed: "Filed
Feb. 25, 1944

Jas. J. O'Connor
Clerk."

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MISSOURI } ss:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original CLAIM OF B. SHERMAN LANDAU filed February 25, 1944, In the Matter of CHRISTOPHER ENGINEERING COMPANY, a corporation, Debtor, In Proceedings for the Reorganization of a Corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 19th day of May, A. D. 1944.

JAMES J. O'CONNOR,
Clerk.

By JOHN A. OLDENDORPH,
Deputy Clerk.

(SEAL)

EXHIBIT NO. 9

CAPTION 10947

PLAN OF REORGANIZATION

TO THE HONORABLE GEORGE H. MOORE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI:

The following plan of reorganization is submitted by certain of the stockholders whose names are subscribed hereunto as and for the plan of reorganization for the debtor company:

I

PERSONS NOT AFFECTED BY THE PLAN

1. Holders of the common stock of the corporate debtor will not be affected by the plan.

PERSONS AFFECTED BY THE PLAN

1. *Claims Due the United States of America.*

The debtor, as reorganized, hereby assumes and agrees to pay in full all tax liabilities owing by the debtor, or the receivers or trustees thereof, to the United States of America. The claims of the United States shall have the same priority and preference over claims of other creditors of the debtor, as reorganized, with respect to the assets thereof, as would lie against the assets of the debtor, or the trustees or receivers thereof, had these proceedings not intervened, and the United States of America is hereby granted the same remedies against the debtor, as reorganized, and its assets with regard to the collection of such liabilities as it had against the debtor. All statutes of limitation upon the collection of such claims shall be suspended

during the time these proceedings are pending and for such additional period of time such claims or any part thereof remain unpaid. Subject to its approval the Court shall retain jurisdiction over the assets herein dealt with and over any and all persons, firms, or corporations to whom said assets may be transferred, and over all parties appearing herein for the purpose of carrying out and giving effect to any and all provisions of the plan and the decree confirming the same in so far as said plan effects and applies to tax claims of the United States of America.

2. *Preferred Claims.*

It is proposed that all claims allowed by this Court and entitled to priority under the Bankruptcy Act will be paid in full as soon as funds are available for said purpose.

3. *Secured Creditors.*

All claims of secured creditors as allowed by this Court will be paid in full as soon as funds are available for that purpose.

4. *General Creditors.*

All claims of general creditors allowed by this Court will be paid in full in the following manner:

A new class of first preferred stock to be issued by the reorganized debtor company at $100.00 par value, being 4% cumulative preferred stock, will be issued to creditors in full payment of their claims, stock of a par value equal to the amount of the allowed claim will be delivered to each creditor whose claim is allowed in this proceeding. Any part of said preferred stock may be called by the debtor at any time at par plus accumulated and unpaid interest.

5. *Preferred Stockholders.*

The outstanding preferred stock of the debtor corporation shall be turned in to debtor company for cancellation and in lieu thereof, the debtor shall issue to said stockholders an equal number of shares of second preferred stock equal in par value to the preferred stock being surrendered. This second preferred stock shall be subordinate to the first preferred stock referred to in paragraph No. 4 above in the event of liquidation, shall be of $100.00 par value and shall bear interest at the rate of 6% and shall be non-cumulative, non-voting preferred stock.

6. *Costs and Allowances.*

The debtor will pay in cash all costs and allowances in this cause within thirty days after the same have been determined and allowed subsequent to the approval and confirmation of this plan of reorganization.

7. *Provision for Non-Consenting Classes of Claimants.*

Should the required number of any class of claimants who are required to consent to the plan refuse or withhold such consent, then in that event, the debtor shall submit a new and modified plan and this plan will be abandoned.

WHEREFORE, it is respectfully prayed that this Court enter an order approving and confirming this proposed plan.

J. M. BROWN
Stockholder

UNITED STATES OF AMERICA
STATE OF MISSOURI } SS:
CITY OF ST. LOUIS

I, J. M. Brown, a stockholder of Christopher Engineering Company, a corporation, the debtor mentioned and

described in the above plan of reorganization, do hereby make solemn oath that the statements therein contained are true to the best of my knowledge, information and belief.

J. M. BROWN

Subscribed and sworn to before me this 20th day of March, 1944.

NOAH WEINSTEIN
Notary Public

My Commission expires March 13, 1948.

Endorsed:

"Filed March 22, 1944

Jas. J. O'Connor,
Clerk."

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MISSOURI } SS:

I, JAMES J. O'CONNOR, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original plan of Reorganization filed March 22, 1944. In the Matter of CHRISTOPHER ENGINEERING COMPANY, a Corporation, Debtor. In Proceedings for the reorganization of a corporation, No. 10947, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 5th day of January, A. D., 1945.

JAMES J. O'CONNOR,
Clerk.

By Raymond E. Walczyk,
Deputy Clerk.

(SEAL)

EXHIBIT 10

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

In the matter of NATIONAL AIRCRAFT CORPORATION, a corporation, Bankrupt.	No. 9401 B.

PETITION AND PROOF OF CLAIM OF J. M. BROWN

STATE OF MISSOURI
CITY OF ST. LOUIS } ss:

J. M. Brown, of the City of St. Louis, State of Missouri, being duly sworn, deposes and says:

1) That he is filing this petition and proof of claim in this proceeding with the express reservation of his objections to the jurisdiction of this Court herein, which position he has heretofore made known to this Court, and this petition & proof of claim is filed for the purpose of protecting and preserving his rights herein until a final determination of the jurisdictional question involved is had.

2) That the United States Government entered into a contract with the National Aircraft Corporation, the bankrupt herein, being Contract No. W 535 a c 26259, and that under and pursuant thereto, petitioner and A. B. Christopher rendered services and incurred expenses as set forth in the itemized statement which is attached hereto, marked Exhibit "A," and by express reference made a part hereof; that the United States Government and/or the National Aircraft Corporation, the bankrupt herein, were, at and before the filing against the National Air-

craft Corporation of the petition for adjudication of bankruptcy, and still are, justly and truly indebted to petitioner, J. M. Brown, in the sum of $19,000.00; that the said claim of A. B. Christopher was, on the 1st day of April, 1944, after the filing of the said petition, duly assigned by the said A. B. Christopher to this deponent and the above-named bankrupt and/or the United States Government is, by reason of the said assignment, justly and truly indebted to this deponent in the said aforementioned sum of $19,000.00, a copy of said assignment being attached hereto and marked Exhibit "B," accordingly, the total sum due deponent is $38,000.00; That petitioner is entitled to assert his said claim against the United States Government and/or the National Aircraft Corporation, the bankrupt herein.

3) That the consideration of said debt is set forth in Exhibit "A" which is attached hereto and by express reference made a part hereof.

4) That no part of said debt has been paid except as set forth in said Exhibit "A."

5) That there are no set-offs or counter-claims to said debt.

6) That petitioner does not hold, and has not, nor has any person, by his order or to petitioner's knowledge or belief, for his use, had or received, any security or securities for said debt.

WHEREFORE, your petitioner prays that:

a) His claim in the amount of $34,000.00 be allowed herein;

b) He be permitted to assert his claim hereinabove set forth, against the United States Government in the

name of the National Aircraft Corporation and/or its Trustee in bankruptcy.

/s/ J. M. Brown

Subscribed and sworn to before me this 31st day of August, 1944.

(s) Noah Weinstein
Notary Public

My commission expires March 13, 1948.

Seal.

EXHIBIT "A"

Suite No. 315

J. M. BROWN
705 Olive Street,
St. Louis,
Missouri.

August 29, 1944.

TO THE NATIONAL AIRCRAFT CORPORATION, ELWOOD, INDIANA.

J. M. Brown salary for year 1943	$18,000.00
J. M. Brown traveling expenses, approximately	1,000.00
A. B. Christopher salary for year 1943 assigned to J. M. Brown	18,000.00
A. B. Christopher traveling expenses, assigned to J. M. Brown, app.	1,000.00
Total	$38,000.00
Credits by payment	4,000.00
Amount due	$34,000.00

EXHIBIT "B"

AGREEMENT

THIS AGREEMENT, made and entered into in the City of St. Louis, Missouri, this 1st day of April, 1944, by and between A. B. Christopher, Party of the First Part, and J. M. Brown, Party of the Second Part, WITNESSETH THAT:

A. B. Christopher party of the first part, states that he is owner of four (4) certificates Numbered 117-119-121 and 123 totaling two hundred eighty-eight and one-half (288½) shares of the capital stock of the National Aircraft Corp. an Indiana Corp. (this stock was delivered to Jerome Duggan Esq.: Trustee for Christopher Engineering Co. a corp. in Bankruptcy re-organization, under Court order) A. B. Christopher party of the first part states that he is the sole owner of Thirty-Three Hundred (3300) shares of the Capital stock of the Christopher Engineering Co., a Missouri corporation, some of this stock is held for me. I am the owner of an one-half (½) undivided interest in the following partnerships composed of A. B. Christopher and J. M. Brown; Christopher Engineering & Manufacturing Co., Christopher Tool Co. and Christopher Aircraft Co. and said party of the first part is a creditor of said various described corporations and partnerships.

Witnesseth, that the said party of the first part A. B. Christopher, for and in consideration of the sum of one hundred ($100.00) dollars and other valuable considerations, paid by said party of the second part J. M. Brown, the receipt is hereby acknowledged, does by these presents, remise, release, assign, sell, transfer, give, convey and QUIT CLAIM any right, title or interest that I have in the above capital stock shares, interest or claims as stock-

holder, creditor, officer and partner in or against the above mentioned corporations and partnerships; unto J. M. Brown the said party of the second part; to have and to hold the same together with all rights, interests and privileges to the same belonging unto the said party of the second part, and to his heirs and assigns forever, granting, making, constituting, and appointing J. M. Brown party of the second part, full power and authority to perform all and every act whatsoever, requisite and necessary to transfer unto party of the second part, all my right title and interest, to any stock shares, claims or creditors claim assignment or interest I may have in or against the above mentioned corporations and partnerships with full power of substitution.

That neither the said party of the first part, nor his heirs nor any persons or person for him or in his name or behalf, shall or will hereafter claim or demand any right title or interest in the capital stock shares, claims or creditors claims, assets in the above mentioned corporations and partnerships, but he, they and every one of them shall by these presents, be excluded and forever barred.

In Witness Whereof, the said party of the first part has executed these presents the day and year first above written.

A. B. Christopher.

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss:

On this 1st day of April, 1944 before me personally appeared A. B. Christopher, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed. In testimony whereof, I have hereunto set

my hand and seal in the city and state aforesaid this day and year above written.

My commission expires Nov. 28, 1947.

John A. Bourg,
Notary Public.

Entry on Petition and Proof of Claim of J. M. Brown: Filed September 2, 1944. Carl Wilde, Referee in Bankruptcy, 10 A. M.

United States of America
Southern District of Indiana. } ss:

I, Albert Ward, hereby certify that I am one of the Referees in Bankruptcy of the District Court of the United States for the Southern District of Indiana, and that the foregoing is a true and complete copy of so much of the record of proceedings in the above-entitled cause in bankruptcy pending before me, as shows the petition and proof of claim of J. M. Brown, filed with former Carl Wilde, Referee in Bankruptcy, before whom this case was then pending, in the sum of $34,000.00, on the 2nd day of September, 1944.

Dated at Indianapolis, in said District, this 3rd day of February, 1945.

(Signed) ALBERT WARD
Referee in Bankruptcy.

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SUPREME COURT OF THE UNITED STATES.

Nos. 418-419.—October Term, 1945.

Jerome F. Duggan, Trustee of the Estate of Christopher Engineering Company and National Aircraft Corporation, Petitioner, 418 *vs.* James C. Sansberry, Trustee of the Estate of National Aircraft Corporation. National Aircraft Corporation, Petitioner, 419 *vs.* James C. Sansberry, Trustee of the Estate of National Aircraft Corporation.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 4, 1946.]

Mr. Justice Rutledge delivered the opinion of the Court.

These cases involve, as the Circuit Court of Appeals said, 149 F. 2d 458, "a clash of jurisdiction" between two District Courts. They raise important questions as to the construction of certain sections of Chapter X of the Bankruptcy Act, 11 U. S. C. §501 *et seq.* Two corporations, Christopher Engineering Company and National Aircraft Corporation, are concerned, as is the question of their relationship as parent and subsidiary corporations.

On December 27, 1943, Christopher Engineering Company filed a petition for reorganization under Chapter X in the District Court for the Eastern Division of the Eastern Judicial District of Missouri. On the same day the petition was approved as properly filed and petitioner Duggan was appointed trustee. Approximately a month later, January 21, 1944, an involuntary petition in ordinary bankruptcy was filed by its creditors against National Aircraft Corporation, which petitioner Duggan claims was a subsidiary of Christopher, in the District Court for the Southern District of Indiana.[1] A petition for the appointment

[1] On January 19, 1944, an Indiana state court appointed a receiver for National. The receiver never qualified, however, the qualification having been delayed because of a restraining order entered by the District Judge in the Christopher reorganization proceedings.

of a receiver in bankruptcy for National was filed and referred to a referee who took the matter under advisement after holding a hearing at which Duggan, as trustee of Christopher, appeared by his attorney. On February 7, 1944, the involuntary petition being unopposed, the referee entered an order of adjudication, and the following day appointed respondent Sansberry as receiver. On March 7, 1944, the first meeting of National's creditors was held. At that meeting Brown, its secretary-treasurer, testified that in December, 1942, he and A. B. Christopher[2] had purchased all the capital stock of National and that, although the certificates had been turned over to Duggan, "there is no reason that he [Brown] knows of why such capital stock should be considered the property of Christopher Engineering Company, instead of the property of himself and Christopher, individually." At this meeting also the receiver Sansberry was selected as trustee in bankruptcy for National.

On March 21, 1944, Sansberry, acting as trustee, filed a petition for an order authorizing him to offer for sale and to sell the tangible personal property and the real estate belonging to National. The referee ordered that a meeting of creditors be held to consider this petition. Notice of the meeting was sent to Duggan and also to the attorneys for Brown. The meeting was held on April 4, 1944. Neither Duggan nor Brown appeared. No objection to the proposed sale was made except by the United States Army Air Force, which claimed certain personal property. But it was expressly stated on its behalf that there was no objection to the entering of an order for the sale covering any other property of National. On April 6 the referee entered an order directing that the real and personal property of National, with certain exceptions, be offered for public sale on April 20, 1944. Notice of the sale was sent to Duggan and Brown among others.

On April 19, the day prior to the sale, a petition was filed on behalf of National in the reorganization proceedings of Christopher in the Missouri District Court.[3] On the same day that court issued an injunction against holding the sale of National's prop-

[2] A. B. Christopher was president of the Christopher Engineering Company and Brown was vice president of the same company.

[3] The petition was signed "National Aircraft Corporation, a corporation, By J. M. Brown, Petitioner." It recited that "the majority of the capital stock of this subsidiary corporation having power to vote for the election of directors is owned directly by the debtor or indirectly through nominees."

erty. The decree contained a finding that National is a wholly owned subsidiary of the Christopher Engineering Company.

Immediately preceding the sale on April 20, copies of the injunction order were served upon Sansberry and the auctioneer; but they proceeded with the sale. On May 3, after the trustee had filed his report to the effect that the sale had been advantageous and after a hearing had been held, the referee approved and confirmed the sale. He then granted petitions for review of this order which were filed by Duggan and by the National Aircraft Corporation per Brown.[4] The District Court affirmed the referee's order, as did the Circuit Court of Appeals, one judge concurring specially and one dissenting. 149 F. 2d 548. We granted certiorari. 326 U. S. —.

The Circuit Court of Appeals held, in the first place, that for the District Court in Missouri to obtain jurisdiction over National and its assets, it had to be established as a "jurisdictional fact" that "National was a subsidiary of Christopher, not only on April 19, 1944, but on December 27, 1943, when Christopher filed its petition for reorganization, and also on January 21, 1944, when the involuntary petition in bankruptcy was filed [in the District Court] in Indiana." This fact, the court found, had not been established; for the order of the Missouri court did not state that Christopher owned any stock of National prior to April 19, 1944; and, as April 19 was the date as of which the Missouri court's determination was effective, "we must presume that there was no evidence before it that the relationship existed earlier." 149 F. 2d at 550.

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[4] In granting the petitions for review, the referee noted that "neither petition was in duplicate as required by Rule 19 of the Rules of the District Court of the United States for the Southern District of Indiana, and neither petition was accompanied by brief as required by said Rule." He also noted that copies of the petitions had not been served upon the trustee, as required by the provisions of § 39(c) of the Bankruptcy Act, 11 U. S. C. § 67(c). He stated: "It seems obvious that the failure of the petitioners for review to comply with the Rules of Court and the provisions of the Bankruptcy Act in respect to the filing of such petitions would justify the denial thereof. In order, however, to resolve all doubts in favor of the petitions and so that the matter may be presented to the Judge of the United States District Court for the Southern District of Indiana, the Referee finds that said petitions should be granted." The referee's granting of the petitions, despite petitioners' failure to comply with § 39(c), appears to be justified because the record indicates that the trustee waived service. It has been said that the requirement of service is not jurisdictional. 2 Collier, Bankruptcy (14th ed.) § 39.24, n. 15.

The referee denied petitions for a stay of enforcement of the order approving and confirming the sale. No appeal was taken from the order of denial.

In the second place, the Court of Appeals held that under Chapter X, when a subsidiary corporation has been adjudicated a bankrupt in one District Court and its property is transferred to a trustee, it may not file a petition for reorganization in another District Court where the reorganization proceeding of its parent is pending.[5] And finally the court held that the petition for reorganization was improperly filed in any case, since it was not shown that Brown was authorized to file it.

We come to different conclusions. Regardless of whether National's petition for reorganization in the Missouri proceedings was properly filed on April 19, the Indiana Court, on being notified that the petition had been filed and approved[6] and that an injunction had issued, should have stayed immediately the sale of National's assets. Section 113, 11 U. S. C. § 513, provides with respect to reorganization proceedings: "Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed, of a prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property, and may upon cause shown enjoin or stay until the petition is approved or dismissed the commencement or continuation of a suit against a debtor." It was on the authority of this section, we may assume,[7] that the in-

[5] See 149 F. 2d at 551-552 for the court's construction of the statute which led it to this conclusion, and compare the dissenting opinion, 149 F. 2d at 553, for a different construction.

[6] The petition was approved on the same day that it was filed. See notes 7 and 11.

[7] For the purposes of this case it is not necessary to decide whether the applicable section is § 113 or § 148, and we therefore expressly reserve that question.

Section 148 provides: "Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure, or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property." It might be urged that this section would apply since the petition had been "approved" in the sense of § 141, 11 U. S. C. § 541, which provides: "Upon the filing of a petition by a debtor the judge shall enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith or dismissing it if not so satisfied"; and that therefore, under § 148, the bankruptcy proceeding was automatically stayed and it was unnecessary for the injunction to issue.

The alternative view would be that the meaning of "approve" as used in §§ 113 and 148 is not the *ex parte* approval given immediately upon the filing of a petition under § 141 but the approval given after adversary proceedings under § 144, 11 U. S. C. § 544. See note 11 and text.

junction staying the sale of National's property was issued. As interpreted[8] the section declares that when a petition for reorganization has been filed by a corporation, the judge may stay pending proceedings. It does not differentiate between petitions filed by parent corporations and petitions filed by subsidiaries, nor does it distinguish petitions which have been filed correctly from those which have been filed erroneously with the reorganization court. It thus applies to National, whose petition for reorganization had been filed and against which a bankruptcy proceeding was pending.

Opportunity was afforded to interested parties to come into the reorganization proceeding in order to show that National's petition should not have been approved. See § 137, 11 U. S. C. § 537, which provides: "Prior to the first date set for the hearing provided in section 561 of this title,[9] an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent,[10] by any stockholder of the debtor." And § 144, 11 U. S. C. § 544, provides, "If any answer filed by any creditor, indenture trustee, or stockholder shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied."[11] Thus, under §§ 137 and 144, an answer could be filed to National's

[8] See note 7.

[9] Section 161, 11 U. S. C. § 561, reads: "The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate."
In connection with § 161, see § 162, 11 U. S. C. § 562.

[10] National's petition for reorganization alleged: "This subsidiary corporation is unable to meet its debts as they mature. . . ."

[11] Under this section the District Court, if satisfied that the petition complies with the requirements of Chapter X and has been filed in good faith and that the material allegations are sustained by the proofs, may be approving the petition *for the second time:* for, as in the present case, he may have approved it in accordance with § 141, 11 U. S. C. § 541, for the first

petition, denying that National was a subsidiary of Christopher, and asking that the petition be dismissed. The judge would then be obliged to hold at least a summary hearing, see *In re Cheney Bros.*, 12 F. Supp. 609, 611,[12] a material allegation being controverted, and to decide the disputed issue on its merits.

In as much as the interested parties thus had an opportunity in the reorganization proceeding to dispute the allegations of National's petition that a parent-subsidiary relationship existed between it and Christopher and by doing so to have that issue determined on the facts, we think it plain that Congress intended that the same issue should not be tried collaterally in the bankruptcy proceeding.[13]

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time at the time the petition was filed. See 10 Remington, Bankruptcy (1939) § 4466. Cf. note 7.

The order of approval under § 141, which consists of "first, a conclusion of law to the effect that the petition is sufficient in respect of its allegations, second, a finding of fact that the petition is filed in good faith," 10 Remington § 4453, having been made *ex parte*, is of course not conclusive. See note 7. See also the testimony of Mr. Harold Remington in Hearings before the Committee on the Judiciary of the House of Representatives on H. R. 6439, Subsequently Reported as H. R. 8046, 75th Cong., 1st Sess., 226-227. And see Gerdes, Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act (1938) 52 Harv. L. Rev. 1, 7, n. 38, for a suggestion that the time within which answers to the petition may be filed cannot be fixed until an order approving the petition, under § 141, has been entered. If this be the case, it would seem that a judge could not avoid this problem of double approval by not approving the petition until an answer had been received.

[12] Cf. Gerdes, Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act (1938) 52 Harv. L. Rev. 1, 7: "The statute contains no mandatory provision requiring notice of the hearing on the issues raised by an answer to be given to all creditors and stockholders entitled to controvert the allegations of the petition. If such notice is given, a determination of any issue tried at the hearing becomes conclusive [citing § 147, 11 U. S. C. § 545]. In the absence of such notice, recurrent trials of the same issues may be necessary. Once an order approving the petition has been entered, however, it may be possible to avoid the expense of giving notice to all creditors and stockholders and also avoid repeated trials by postponing the hearings until after the time to file answers has expired, and then trying all of such issues at the same time." Cf. also 10 Remington, Bankruptcy (1939) § 4466: "The possibility of successive orders of approval is probably more formal and theoretical than substantial and real, since the hearing upon all answers filed by creditors, indenture trustees, and stockholders would probably be consolidated."

[13] It might be argued that if the Circuit Court of Appeals was correct in holding that for the Missouri District Court to obtain jurisdiction over National it was necessary that National be a subsidiary of Christopher, not only on the date when National filed its petition for reorganization, but also when Christopher filed its petition and when the involuntary petition in bankruptcy was filed against National, then interested parties would not have an opportunity to controvert a material allegation of the petition, namely, that such a parent-subsidiary relationship did exist on those dates, since the peti-

But respondent relies especially upon § 149, 11 U. S. C. § 549, as allowing a collateral attack in the bankruptcy court upon the reorganization proceedings initiated by National. This section reads: "An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court." Respondent's position is that the Missouri District Court's approval of the petition upon its filing was not an order which had become final and that as a result the reorganization proceedings thereby initiated by National were subject to question in the bankruptcy forum.

Assuming arguendo that the *ex parte* order of approval, made upon the day the petition for reorganization was filed, was not a final order[14] and assuming also that, as respondent argues, "jurisdiction" within the meaning of this section does not have the limited meaning of "venue," the section nevertheless does not support the position taken. Congress in § 113, 11 U. S. C. § 513, explicitly provided that a reorganization court, upon the filing of a petition, could stay pending bankruptcy proceedings.[15] In the light of this provision it is scarcely possible that Congress also intended that a collateral attack could be made in the bankruptcy forum, the proceedings in which had been stayed,[16] upon the proceedings in the reorganization forum.

But it is said that if this be the case, then § 149 has no meaning at all. We do not think this conclusion follows. Although, as we construe the Act, no collateral attack may be brought against

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tion contained no such explicit statement. The answer would be, however, that the interested parties, first, could contend that such an allegation was required as a jurisdictional fact, see § 130 (2), 11 U. S. C. § 530 (2), and, second, if the more general statement of the parent subsidiary relationship were to be taken to satisfy the requirement, if any, that it also existed on the prior dates, they could raise in answer to the petition that it did not exist on those dates. It would then be for the reorganization court to determine the correctness of either contention or both.

[14] S. Rep. 1916, 75th Cong., 2d Sess., 27, says that § 149 "is designed to foreclose all direct or collateral attack upon jurisdiction or venue once the period for appeal from an order approving a petition has expired." See for a discussion of the meaning of "final," Gordes, Corporate Reorganization: Changes Effected by Chapter X of the Bankruptcy Act (1938) 52 Harv. L. Rev. 1, 7-8.

[15] See note 7 and text.

[16] Although the Missouri District Court enjoined only the sale, this was in effect an injunction against the entire bankruptcy proceedings.

See In re Long Island Properties, 42 F. Supp. 323, to the effect that a judgment rendered by a state court in violation of a stay order that had been issued by a reorganization court was without effect in the reorganization.

the reorganization proceeding, at least in a bankruptcy forum the proceedings in which the reorganization court has stayed, this does not mean that under other circumstances, where an order of approval is not final, § 149 would not allow the reorganization proceeding to be attacked collaterally in some other forum, in particular where "a prior . . . bankruptcy, mortgage foreclosure or equity receivership proceeding [or] . . . any act or other proceeding to enforce a lien against a debtor's property," § 113, 11 U. S. C. § 513, is not pending. Moreover, had the Missouri District Court not enjoined the bankruptcy proceeding, we may assume[17] that the bankruptcy court would have been correct in not ordering the sale of the assets of National halted.

The problem involves, of course, not the ordinary power of one court of general jurisdiction to question the jurisdiction of another court of general jurisdiction. The jurisdiction of both the bankruptcy forum and the reorganization forum is derived from and is limited by the Bankruptcy Act, enacted in accordance with the congressional power "to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." Constitution, Article 1, § 8. It was within the power of Congress to provide that a bankruptcy court could not permit an attack, even on the usual grounds, to be made upon proceedings initiated in a reorganization court.[18] This power Congress exercised by permitting the reorganization court to stay, as it did,[19] the bankruptcy proceedings.

The exercise of this power, taken in relation to the facts at bar, was in pursuance of the congressional intention ordinarily to allow parent and subsidiary to be reorganized in a single proceeding,[20] thereby effectuating its general policy that the entire

[17] See note 14 and text; also note 7.

[18] In Kalb v. Feuerstein, 308 U. S. 433, 438-439, what is almost the converse was stated: "It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally."

[19] See note 16.

[20] At the Hearings on the Chandler Act Mr. Weinstein stated: "It is advisable that the court which is considering the proceeding of a parent corporation should also have before it the proceeding of the subsidiary, because there may be these interrelations and connected interests, and the plans offered by them, respectively, may be carried forward concurrently." Hear-

administration of an estate should be centralized in a single reorganization court.[21] If the reorganization forum lacked the power to stay the bankruptcy proceeding and thereby to prevent a collateral inquiry into its own jurisdiction, this policy of Congress would be frustrated; for instead of one court's having "exclusive jurisdiction of the debtor and its property, wherever located,"[22] there would be two courts each with a claim to jurisdiction and each denying the other's jurisdiction. We may not construe the Bankruptcy Act as permitting such a state of affairs.

In view of the disposition we make of the cause it is unnecessary to take specific action concerning petitioners' motion, submitted in their reply brief, relating to certain matters affecting the state of the record.

The judgments are reversed and the causes are remanded for further proceedings in conformity with this opinion.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

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ings before the Committee on the Judiciary, House of Representatives, on H. R. 6439, Subsequently Reported as H. R. 8046, 75th Cong., 1st Sess., 136. See H. Rep. 1409, 75th Cong., 1st Sess., 41; S. Rep. 1916, 75th Cong., 3d Sess., 25. Cf. In re Associated Gas & Elec. Co., 11 F. Supp. 359, 373-374, a Section 77 B case, holding that although subsidiary corporations had not filed petitions in the parent's reorganization, "It does not follow, however, that the court has no jurisdiction to restrain subsidiaries over whose action the debtor company has control, from so dealing with their assets as to dilute the equity of the debtor company and thus to endanger the interests of creditors on whose behalf the jurisdiction of the court was invoked."

[21] See Mar-Tex Realization Corp. v. Wolfson, 145 F. 2d 360, 362-363.

[22] § 111, 11 U. S. C. § 511. The section reads in full: "Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

Section 118, 11 U. S. C. § 518, provides, however: "The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district regardless of the location of the principal assets of the debtor or its principal place of business if the interests of the parties will be served by such transfer."